SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 786.

GABE E. PARKER, GABE E. PARKER, AS SUPERINTENDENT FOR THE FIVE CIVILIZED TRIBES, W. M. BAKER, AND W. M. BAKER, AS CASHIER FOR THE FIVE CIVILIZED TRIBES, APPELLANTS,

vs.

EASTMAN RICHARD AND R. D. MARTIN, CO-ADMINISTRATORS OF THE ESTATE OF SAMUEL RICHARD, DECEASED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September term, 1917, of said court, before the Honorable John E. Carland and the Honorable Kimbrough Stone, circuit judges, and the Honorable Thomas C. Munger, district judge.

Attest:

[SEAL.] E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit: on the thirtieth day of September, A. D. 1916, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Eastman Richard et al., etc., were appellants and Gabe E. Parker et al., etc., were appellees, which said transcript as prepared, printed and certified by the clerk of said District Court in pursuance of an act of Congress approved February 13, 1911, is in the words and figures following, to wit:

1 In the United States District Court for the Eastern District of Oklahoma.

Pleas and proceedings before the Honorable Ralph E. Campbell, judge of the District Court of the United States for the Eastern District of Oklahoma, presiding in the following entitled cause:

EASTMAN RICHARD AND R. D. MARTIN, COADMINISTRATORS of the estate of Samuel Richard, deceased, plaintiffs,
vs.
GABE E. PARKER, and GABE E. PARKER, as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, defendants. } Equity No. 2322.

EASTMAN RICHARD AND R. D. MARTIN, COADMINISTRATORS of the estate of Samuel Richard, deceased, appellants,
vs.
GABE E. PARKER, and GABE E. PARKER as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellees.

Be it remembered, That this suit was begun in the District Court of Muskogee County, State of Oklahoma, and came into the United States District Court for the Eastern District of Oklahoma upon

Petition and Bond for Removal; the transcript having been filed in the office of the clerk of the United States District Court for the Eastern District of Oklahoma on the 18th day of August, 1916, and was given Equity No. 2322.

2 The original amended petition being in words and figures as follows:

In the District Court in and for Muskogee County, State of Oklahoma, before Hon. R. P. deGraffenreid, district judge. Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, plaintiffs, v. Gabe E. Parker, and Gabe E. Parker as superintendent for the Five Civilized Tribes; W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, defendants.—No. 4971.

First amended petition.

Comes now the plaintiffs herein, Eastman Richard and R. D. Martin, as coadministrators of the estate of Samuel Richard, deceased, and for their first amended petition, in the above numbered and styled cause (which is filed by and with the consent of the court, and the said defendants, Gabe E. Parker and W. M. Baker), and for causes of action, alleges and states:

1. That plaintiffs each and both of them, are residents of McIntosh County, Oklahoma; that the defendants are residents of Muskogee County, Oklahoma, and that this court has jurisdiction of this action.

2. That these plaintiffs, Eastman Richard and R. D. Martin, were by the county court, McIntosh County, Oklahoma, on, to wit: Feb. 29, 1916, duly and legally appointed coadministrators of the estate of Samuel Richard, deceased, and that on the 29th day of February, 1916, these plaintiffs, as principal, together with the Southern Surety Company, as surety, made, executed and delivered their joint and several administrator's bond, according to law, in said cause, in the penal sum of $225,000.00, which said bond was accepted and approved by the county court, a copy of which said bond is hereto attached, marked Exhibit "A" and made a part hereof. That on the 29th day of February, 1916, letters of administration were duly and legally issued by the said county court of McIntosh County, Oklahoma, as aforesaid, to these petitioners, as coadministrators of

3 said estate of Samuel Richard, deceased, a copy of which said letters of administration is hereto attached, marked Exhibit "B" and made a part hereof. That these plaintiffs are the legally appointed, qualified and acting coadministrators of the estate of Samuel Richard, deceased, and as such coadministrators these plaintiffs are entitled to collect and receive any and all monies or other personal properties belonging to said estate.

III.

These plaintiffs further allege and state that the said defendants, Gabe E. Parker, was and is, and has been at all times herein mentioned the legally appointed, qualified and acting superintendent for the Five Civilized Tribes, and that the said defendant, W. M. Baker, was and is and has been at all times herein mentioned, the legally appointed qualified and acting cashier for the Five Civilized Tribes, and that said defendants have collected and received, and have at all times herein mentioned, and now have in their possession, custody and control, the sum of one hundred seventy-five thousand, *eighteen* hundred and eighteen dollars and sixty-seven cents ($175,-818.67) in money belonging to the estate of Samuel Richard, deceased. That these plaintiffs are entitled to the possession of all of said monies belonging to the estate of Samuel Richard, deceased, as aforesaid, and that the said defendants, each and both of them, as aforesaid, have unlawfully, and do now unlawfully retain in their possession, custody, and control the aforesaid sums of money.

IV.

Plaintiffs further allege and state that their said intestate, the said Samuel Richard, was during his lifetime, a full-blood citizen of the Creek Nation, and enrolled upon the approved rolls of the Dawes Commission, opposite No. 7668, and that there was duly allotted and patented to the said Samuel Richard, as said allottee of the Creek Tribe of Indians, an allotment of land consisting of 160 acres of land, described as the southwest quarter (SW.4) of section 4, township 17 north, range 7 east, of the Indian base and meridian, according to the U. S. survey thereof, within the State of Oklahoma, and that these plaintiffs' intestate, the said Samuel Richard, being the owner in fee simple title to the above described 160 acres of land, and being then a minor under the age of 21 years, did, on, to wit, April 13, 1912, by his then legal guardian, Eastman Richard, make,
4 execute and deliver a certain oil and gas mining lease upon the above-described lands, to the Kathleen Oil Company, a corporation, as lessee, and that the said lease was duly approved by the proper officials then having jurisdiction thereof, by reason of the said minority of the said Samuel Richard. That under the terms of the said lease it was and is provided that the lessee agrees to pay or cause to be paid, to the United States Indian superintendent, Union Agency, Muskogee, Oklahoma, or his successor, as trustee, for the use and benefit of said lessor, as royalty, the sums of money representing 12½% of the gross proceeds of the sale of all crude oil extracted from said lands. The original of which said lease is in the possession of said defendants who are hereby notified to produce same at the trial of this cause, or secondary evidence will be introduced as to its contents.

V.

Plaintiffs further allege and state that under the terms of said lease it was and is provided that in the event the restrictions on alienation shall be removed from the leasehold premises described above, said lease shall be removed from the supervision of the Secretary of the Interior, such release to take effect without further agreement from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior, as therein provided, shall cease, and all payments required to be paid to the United States Indian superintendent, shall thereafter be made to the said lessor, or the then owner of said lands.

VI.

These plaintiffs further allege and state that they have been informed and believe, and therefore charge, that the said defendants, have collected, and have at all times herein mentioned, and have now in their possession, custody and control the sum of $175,818.67, in money belonging to the estate of said Samuel Richard, deceased. That said defendants as trustees of plaintiffs' intestate and estate, collected same from the lessees under said lease as royalty due said estate by reason of the sale of oil as provided for in said lease, and that the dates and various amounts so collected by said defendants is within the personal and peculiar knowledge of said defendants.

VII.

These plaintiffs further allege and state that said Samuel Richard died on January 24, 1916, and thereafter on, to wit, March 1, 1916, plaintiff by and with the consent of the lessee and owner of said lease, revoked, renounced, cancelled and terminated the appointment of the said defendants as trustees under said lease to collect the royalties accruing thereunder and terminated said trusteeship and notified the defendants thereof, and requested that the said defendants pay to these plaintiffs monies then held by them as trustees of plaintiffs' estate, but that the said defendants did then, and now refuse to surrender possession of the monies collected by them as trustees of plaintiffs' estate, and refuse to pay same to these plaintiffs. That these plaintiffs are entitled to possession of all monies belonging to estate of Samuel Richard, deceased, which are being held by said defendants, each and both of them as aforesaid. That said sums of money held by said defendants have by them been and are now illegally held and retained in their possession, custody, and control.

VIII.

These plaintiffs further allege and state (in addition to the revocation and termination made by them of the trusteeship, as herein-

above stated): That by reason of the death of the said Samuel Richard, as aforesaid, on the 24th day of January, 1916, that all restrictions upon the alienation of the lands covered by said lease, were then by operation of law removed beyond under the acts of Congress, relating and pertaining thereto, and that by reason of the death of said Samuel Richard, that the said monies held by said defendants, and the proceeds accruing from said lease, did then and there (if they were at that time restricted) immediately became unrestricted, and that the said defendants had and have no further jurisdiction or lawful right to hold possession of said sums of money, or any part thereof, and that the said defendants since the death of the said Samuel Richard, as aforesaid, have illegally, unlawfully, and without authority of law, held and retained all of the aforesaid sums of money.

IX.

Plaintiffs further allege and state that they have been informed and believe and therefore charge that since the death of the said Samuel Richard on Jan. 24, 1916, as aforesaid, that the said defendants have collected the sum of approximately $50,000.00, the exact amount of which is unknown to plaintiffs, but is within the personal and peculiar knowledge of said defendants, and that unless restrained by proper order of this court, will continue to collect further sums of money belonging to said estate, the amounts of which are unknown to these plaintiffs, but which is within the personal and peculiar knowledge of defendants, and that the said money so
6 collected by them since the death of the said Samuel Richard, as aforesaid, was illegally collected, and is held by them illegally and without lawful authority. That said defendants should be required to render an accounting to this court (in addition to the above stated sum of $175,818.67) of all monies received and collected by them since Jan. 24, 1916, as aforesaid, as well as an accounting of all monies that may be collected by them until the termination of this suit.

X.

Plaintiffs further allege and state that on March 1, 1916, and on several occasions thereafter, and prior to the institution of this action, they made both oral and written demands of said defendants for the aforesaid sums of money, and for all monies which they have in their possession, custody or control belonging to the estate of said Samuel Richard, deceased. That said defendants have refused and wholly declined to deliver to these plaintiffs said sums of money, or any part thereof. That these plaintiffs have been entitled to the possession of the same ever since March 1, 1916, as aforesaid, and that they are now entitled to the possession thereof.

Wherefore plaintiffs pray:

(a) That the said defendants, and each and both of them be required to render into this court an accounting of all monies or personal property belonging to the estate of the said Samuel Richard, deceased, which they have in their possession, custody or control.

(b) That the said plaintiffs be decreed a judgment against said defendants, and each and both of them in the sum of $175,818.67, in money, as well as for any and all other monies or personal properties which the court may find that they have in their possession, custody or control, together with interest at the rate of 6% per annum, from March 1, 1916.

(c) That said defendants be restrained from collecting any monies due plaintiffs.

(d) That the plaintiffs do have and recover all costs therein accrued.

(e) That the plaintiffs, have all general, special and equitable relief to which they may be justly entitled.

EASTMAN RICHARD and R. D. MARTIN,
Coadministrators of Estate of Samuel Richard, Deceased.
By LUCAS & TABOR, *Attys. for plaintiffs.*

7 *Administrator's or executor's bond.*

STATE OF OKLAHOMA,
McIntosh County, ss:
In the matter of the estate of Samuel Richard, deceased.

Know all men by these presents: That we, R. D. Martin, Checotah, Oklahoma, and Eastman Richard, Pierce, Oklahoma, as principals, and Southern Surety Company of Denison, Oklahoma, as surety, are held and firm firmly bound unto the State of Oklahoma, in the penal sum of two hundred twenty-five thousand, and no/100 ($225,000.00) dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

The conditions of the above obligation is such, that Whereas, by order of the county court of McIntosh County, State of Oklahoma, made and entered on the 29th day of February, A. D. 1916, the above-named principals was appointed coadministrators of the estate of Samuel Richard, deceased, and letters testimentary were directed to issue to said principal, upon their taking and subscribing the oath required by law, and executing a bond to the State of Oklahoma, in the penal sum of two hundred twenty-five thousand and no/100 ($225,000.00) dollars, with two or more sureties to be approved by the judge of said court.

Now, if the above bounden principals shall faithfully execute the duties of such trust as such coadministrators according to law, then this obligation to be void, otherwise to remain in full force and effect.

In witness whereof, we have hereunto subscribed our names, this 29th day of February, A. D. 1916.

[SEAL.]

R. D. MARTIN,
EASTMAN RICHARD,
Southern Surety Company.
By W. F. MOFFAT,
Attorney-in-fact.

I hereby approve the above bond this 29th day of Feb., 1916.

JOHN W. ROBERTSON, *County Judge.*

(Endorsed on back as follows:) "No. 247—Estate Samuel Richard, Decd. Filed Feb. 29, 1916, W. B. Young, Court Clerk. (Ex. "A.")

8 *Letters of administration.*

STATE OF OKLAHOMA,
McIntosh County, ss:

In County Court, sitting at Checotah, Okla. In the matter of estate of Samuel Richard, deceased.

Eastman Richard and R. D. Martin are hereby appointed administrators of the estate of Samuel Richard, deceased.

Witness, John W. Robertson, judge of the County Court of McIntosh County, State of Oklahoma, with the seal thereof affixed this 29th day of February, A. D. 1916.

[SEAL.] JOHN W. ROBERTSON, *County Judge.*

STATE OF OKLAHOMA,
McIntosh County, ss:

I, Eastman Richard, and R. D. Martin do solemnly swear that I will discharge all and singular the duties of administrator of the estate of Samuel Richard, deceased, according to law, and to the best of my ability. So help me God.

[SEAL.]

EASTMAN RICHARD.
R. D. MARTIN.

Subscribed and sworn to before me this 29th day of February, 1916.

JOHN W. ROBERTSON, *County Judge.*

(Ex. "B.")

(Endorsed:) No. 4971. In the District Court in Muskogee County. Eastman Richard and R. D. Martin, administrators of estate of Samuel Richard, decd., Plaintiffs, vs. Gabe E. Parker, Gabe E. Parker, Supt. for Five Civilized Tribes, W. M. Baker and W. M. Baker, cashier for Five Civilized Tribes, Defts. First amended petition. District Court, State of Oklahoma, County of Muskogee, Filed Jul. 29, 1916, C. H. Shaffer, Court Clerk.

(Endorsed:) Filed Aug. 18, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to wit, on the 30th day of August, A. D. 1916, the defendants filed their answer herein, which is in words and figures as follows:

In the District Court of the United States for the Eastern District of Oklahoma.—Eastman Richard and R. D. Martin, coad-
9 ministrators of the Estate of Samuel Richard, deceased, Plaintiffs, v. Gabe E. Parker, Gabe E. Parker, Superintendent for the Five Civilized Tribes, W. M. Baker and W. M. Baker, Cashier for the Five Civilized Tribes, defendants.—No. 2322 Equity.

Answer.

The defendants and each of them, answering the first amended petition herein filed, allege:

I.

That the defendant, Gabe E. Parker, is an officer of the Interior Department of the United States and is designated as Superintendent for the Five Civilized Tribes and that as such officer he is charged and entrusted with the duty of generally supervising the affairs of all Indians and particularly the restricted Indians, so-called, of the Five Civilized Tribes, among whom is the Creek Tribe of Indians.

That the defendant, W. M. Baker, is an officer of the United States and of the Interior Department thereof, designated as cashier for the Five Civilized Tribes, and his duties as such cashier are to receive and disburse according to law all sums of money properly entering into his possession and control as portions of the funds of the Five Civilized Tribes and the individual members thereof.

II.

That as to whether Eastman Richard and R. D. Martin are the duly and legally appointed administrators of the estate of Samuel Richard, deceased, defendants are not advised; nor are defendants advised as to whether Samuel Richard is now deceased and of these facts defendants demand strict proof. But your defendants allege that Samuel Richard was enrolled as a member of the Creek Tribe of Indians of the full blood, opposite number 7668 upon the approved rolls of said tribe and that there was allotted to him as his share of the tribal lands the southwest quarter of section four (4), township seventeen (17) north, range seven (7) east of the Indian base and meridian, which said lands were on the 13th day of April, 1912, by virtue of certain congressional laws designed to protect the said

Samuel Richard, incapable of alienation for a period of approximately nineteen years from said date unless the Secretary of the Interior should sooner cause the restrictions to be removed therefrom. That on said date the allottee thereof, Samuel Richard, was incapable of leasing the said lands for oil, gas or other mineral purposes save with the approval of the Secretary of the Interior and under such rules and regulations as the said Secretary of the Interior might provide, and that on to wit, the said 13th day of April, 1912, the said Samuel Richard, who was then a minor under the age of twenty-one years, did execute by his guardian, Eastman Richard, a certain oil and gas mining lease upon the above described lands, which said lease was duly approved by the county court having jurisdiction of the estate of the said minor, and which said leases was on a form prescribed by the rules and regulations of the Secretary of the Interior, and was duly approved by the Secretary of the In-[terior]. A copy of said lease showing the approval of the Secretary of the Interior is hereto attached, made a part hereof and marked "Exhibit A." Under the terms of said lease and pursuant to the operation thereof there has accrued in the hands of the defendants up to and including the date of the filing of this petition, the sum of $216,152.15, which said sum of money has been received at various times and in varied amounts, a complete account of which would be inconvenient to detail in this petition. But your defendants offer to produce to this court, or any person authorized thereby, all books and papers pertaining to the account of the said Samuel Richard, and stand ready to account at any and all times to this court or to any person properly designated by this court for all sums accrued or hereafter to accrue in their hands by virtue of mining operations under said leases.

III.

Your defendants further allege that the said Samuel Richard, if he be in fact dead, left as his sole and only heir at law one Eastman Richard, one of the plaintiffs in this cause, who is a full-blood Indian of the Creek Tribe and who by the death of the said Samuel Richard, if he be in fact dead, became and now is the sole owner of all the property, both real and personal, of which the said Samuel Richard died seized and possessed; and that said property descended to said Eastman Richard free and discharged of all debts accruing during the lifetime of the said Samuel Richard and said property is not subject to administration in any manner or form whatever. And defendants say that the proceeds of the said oil and gas mining leases are, by virtue of the rules and regulations of the Secretary of the Interior, pertaining to the funds so received and by virtue of the laws of the United States of America provided for the protection of the said Samuel Richard and all his full-blood heirs, restricted trust funds subject to the control of the Secretary of the Interior as the

officer of the United States charged with the duty of enforcing
11 the protection of the United States as a sovereign over its wards, the dependent Indian tribes and the individual members thereof and particularly over the said Samuel Richard, and his full-blood alleged heir, Eastman Richard, one of the plaintiffs herein.

IV.

Your defendants allege that the said allotment of Samuel Richard hereinabove described has at all times since the death of the said Samuel Richard, if he be in fact dead, been the property of the said Eastman Richard and is still owned and controlled by him.

V.

Your defendants and each of them deny that said death of the said Samuel Richard, if said death has in fact occurred, on the 24th day of January, 1916, operated to remove all restrictions upon the alienation of the lands covered by the aforesaid lease and allege that said lands continue to be and are restricted, and they further deny that they have no jurisdiction or lawful right to withhold possession of said sums of money so as aforesaid accruing from the operation of the said lease and deny that they now illegally hold the said sums of money; but say that they hold the same as a trust fund created under the laws of the United States and the rules and regulations of the Secretary of the Interior pertaining thereto, for the benefit of the said Samuel Richard and his full-blood heirs, and that they have the right to withhold and disburse said sums of money at such times and in such quantities as they shall deem proper to the said Samuel Richard, or, in the event of his death, to his full-blood heirs.

VI.

Defendants allege that they have no personal interest whatsoever in said sums of money and specifically disclaim as individuals any right, title, or interest therein, but say that they and each of them do hold said sums by authority of the acts of Congress by virtue of which said funds were created and the rules and regulations of the Secretary of the Interior provided pursuant thereto respecting leases of this kind and character; that they and each of them have been, are, and at all times will be willing and ready to abide by the orders of this court or any other court of competent jurisdiction relative to the disposition of the money aforesaid, but respectfully allege that said sums of money so accruing in their hands are not subject to disposition and control save and except by order of the Secretary of the Interior or his duly authorized subordinates.

12 Wherefore, defendants pray that plaintiffs take nothing by this action, but that they be hence dismissed with their

costs, and they have all other and further relief to which they may be in the premises entitled.

GABE E. PARKER,
GABE E. PARKER,
As Superintendent for the Five Civilized Tribes,
W. M. BAKER,
W. M. BAKER,
As Cashier for the Five Civilized Tribes,
By D. H. LINEBAUGH,
United States District Attorney,
and
W. P. MCGINNIS,
and
PAUL PINSON,
Special Assistants to the
United States District Attorney,
Solicitors for Defendants.

EXHIBIT A.

[Stamps and endorsements:

Office of Indian Affairs, received Jul. 7, 1913—84133.
Received Union Agency Jun. 18, 1912. Enclosure to Dept. No. 1963.
Office of Indian Affairs. Received Dec. 27, 1912—132434.
Office of Indian Affairs. Received May 29, 1912. File—53962.
Received Union Agency, Apr. 26, 1912. Enclosure to No. 24865.
Received Union Agency, Dec. 7, 1912. Enclosure to Dept. No. 3701.
Office Indian Affairs. Received Nov. 21, 1912—117220.
Received Union Agency, Jan. 13, 1913. Enclosure to Dept. No. 118.
13 Received Union Agency Jul. 21, 1913. Enclosure to Dept. No. 2472.
Received Union Agency Mar. 3, 1913. Enclosure to Dept. No. 770.
Office of Indian Affairs. Received Feb. 21, 1913—23610.
Roy No. 6057.
Equitable Surety Co.
Apr. 29, 1917. Q.—H. H.
36057 1 Duplicate.]

Form A. Series 1908.—Approved April 20, 1908.
Amended February 6, and June 29, 1911.

Oil and Gas Mining Lease Upon Land Selected for Allotment.

Creek Nation, Oklahoma.

This indenture of lease, made and entered into in quadruplicate on this 13th day of April, A. D. 1912, by and between Eastman Richard,

as the legal guardian of the person and estate of Samuel Richard, a minor of Pierce, Oklahoma, enrolled as a full blood citizen of the Creek Nation, roll No. 7668, party of the first part, hereinafter designated as lessor, and The Kathleen Oil Company, a corporation, of Tulsa, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908 (35 Stat. L. P. 312), witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations, and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the lessee, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Creek and State of Oklahoma, to wit: The *The* southwest quarter (¼) of section 4, township 17 north, range 7 east of the Indian meridian, and containing 160 acres, more or less, with the exclusive right to prospect for, extract, pipe, store, and remove oil and natural
14 gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operation, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the United States Indian superintendent, Union Agency, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance to be calculated from the date of commencement of utilization: Provided, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty which will become effective as a part of this lease: Provided, further, That in cases of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such an extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or near-by tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas

for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which can not profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

15 3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the superintendent, Union Agency, Muskogee, Oklahoma, for lessor, as advance annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance, for the first and second years; thirty cents per acre per annum, annually in advance, for the third and fourth years; seventy-five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to the United States Indian superintendent, Union Agency, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The fail-

ure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligation to pay such rental, or any other accrued obligation. The
16 lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose, to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells, lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same ad promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-burning startum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property, and upon all of

the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Indian superintendent all amounts then due as provided herein and
17 the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder: Provided, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: Provided, further, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof, by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: Provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian Office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restriction on alienation shall be removed from all the leasehold premises described above, this lease shall
18 be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement,

from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian superintendent shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the Eufaula National Bank, of Eufaula, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

[SEAL.]

EASTMAN RICHARD,
As guardian of the person and estate of Samuel Richard, a minor.

Attest:
[SEAL.]

H. F. SINCLAIR, *Secy.*

Two witnesses to execution by lessor:
C. L. Thomas, P. O., Muskogee, Okla.
Britton H. Tabor, P. O., Checotah, Okla.

THE KATHLEEN OIL COMPANY,
By P. J. WHITE, *President.*

Two witnesses to execution by lessee:
E. B. Huston, P. O., Independence, Kansas.
Paul Konz, P. O., Independence, Kansas.

STATE OF OKLAHOMA,
County of Muskogee, ss:

_____ before me, Minnie M. Ford, a notary public, in and for said county and State, on this 13th day of April, 1912, personally appeared Eastman Richard, as guardian of the person and estate of Samuel Richard, a minor, to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth, and in the capacity therein stated.

MINNIE M. FORD.

[SEAL.]

My commission expires February 26, 1916.

19 DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE, UNION AGENCY,
Muskogee, Okla., May 23, 1912.

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. See my report of even date.

R. S. CATE,
Acting United States Indian Superintendent.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., Jun. 5, 1912.

Respectfully submitted to the Secretary of the Interior, with recommendation that it be approved.

F. H. ABBOTT,
Assistant Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 8, 1912.

Approved:

CAMIE A. THOMPSON,
Assistant Secretary of the Interior.—H.

Filed for record this 26 day of Apr., 1912, at 3 o'clock p. m. Dana H. Kelsey, superintendent Union Agency, by R. W. Field. Advance royalty received, $24.00.
Duplicate. Roy. No. 6057.

[Stamps and endorsements:

Received Union Agency Jul. 20, 1912. Enclosure to No. 42387.
Office of Indian Affairs. Received Nov. 21, 1912—117220.

Ent. Creek Roy, No. 7017.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

Assignment of oil and gas lease.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:
SE. ¼ of SW. ¼ of section 4, Twp. 17 north, range 7 east (and other lands).

20 Now, therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, the said The Kathleen Oil Company, the lessee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all its right, title, and interest of the lessee in and to said SE. ¼ of SW. ¼ of section 4, Twp. 17 north, range 7 east lease, subject to the approval of the Secretary of the Interior, to Kemp & Hayden, copartners, composed of E. R. Kemp and John F. Hayden, of Tulsa, Oklahoma.

In witness whereof the said lessee has hereunto set its hand and seal this 2nd day of July, 1912.

[SEAL.] THE KATHLEEN OIL COMPANY,
By P. J. WHITE, *President.*

Attest:

H. F. SINCLAIR, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

STATE OF OKLAHOMA,
Tulsa County, ss:

Before me, a notary public in and for said county and State, on this 2nd day of July, 1912, personally appeared P. J. White, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[SEAL.] ARTHUR NEWLIN.

My commission expires Oct. 3, 1914.

[Endorsement stamp: Received Union Agency Dec. 7, 1912. Enclosure to Dept. No. 3701.]

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF ——,
County of ——, *ss:*

Before me, ——— in and for said county and State, on this — day of ——, personally appeared ——— to me known to be the identical person— who executed the within and foregoing instrument, and acknowledged to me that — executed the same as — free and voluntary act and deed for the uses and purposes therein set forth.

——— ———.

My commission expires ———.

21 ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such

assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set their hand and seal this 27th day of July, 1912.

KEMP & HAYDEN,
By E. R. KEMP,
JNO. F. HAYDEN.

CONSENT OF SURETY.

The Equitable Surety Company of St. Louis, Mo., surety for The Kathleen Oil Company on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

Dated at Muskogee Oklahoma this ____ day of July, 1912.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Nov. 29, 1912.

Approved: Subject to the conditions attached to the lease.
LEWIS C. LAYLIN, *Assistant Secretary.—H.*

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:

Office of Indian Affairs. Received Feb. 21, 1913. 23610.
Received Union Agency Jan. 20, 1913. Enclosure No. 3872.
Creek 6057.
Ent.]

22 Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard,

guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

SW./4 of SW./– of section 4, township 17, north, range 7 east; said lease having been assigned to the Tartar Oil Company by due and proper departmental assignment.

Now, therefore, for and in consideration of one dollar ($1.00) *dollars*, the receipt of which is hereby acknowledged, the said Tartar Oil Company, the assignee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all of its right, title and interest of the assignee in and to said lease, subject to the approval of the Secretary of the Interior to The Kathleen Oil Company of Tulsa, Oklahoma.

In witness whereof, the said assignee has hereunto set its hand and seal, this fifteenth day of January, 1913.

[SEAL.] TARTER OIL COMPANY,
By HENRY LESCHEN, *President.*

Attest:

W. E. WRISBERG, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

STATE OF MISSOURI,
City of St. Louis, ss:

Before me, a notary public in and for said city and State, on this fifteenth day of January, 1913, personally appeared Henry Leschen to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[SEAL.] ANNA A. FASH,
Notary Public.

My commission expires Sept. 27, 1913.

23 Endorsement stamp: Received Union Agency Mar. 3, 1913. Enclosure to Dept. No. 770.

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF ———,
County of ———, ss:

Before me, ————, in and for said county and State, on this ——— day of ———, personally appeared ——— to me known to be the identical person— who executed the within and foregoing instrument, and acknowledged to me that ——— executed the same as ——— free and voluntary act and deed for the uses and purposes therein set forth.

———————————.

My commission expires ———.

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 17th day of January, 1913.

[SEAL.] THE KATHLEEN OIL COMPANY,
By P. J. WHITE, *President.*

Attest:

H. F. SINCLAIR, *Secretary.*

CONSENT OF SURETY.

The ——— of ———, surety for ——— on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made ———.

Dated at ——— this ——— day of ———, 191—.

———.
———.
———.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 24, 1913.

Approved: Subject to the conditions attached to the lease.

LEWIS C. LAYLIN,
Assistant Secretary.—H.

24 NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:

Received Union Agency May 10, 1913. Enclosure No. 26800.
Office of Indian Affairs. Received Jul. 7, 1913. 84133.
Ent. 37017.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard,

guardian of Samuel Richard, a minor, lessor, which lease has been assigned to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden, covering the following-described lands in the Creek Nation, Oklahoma:

The southeast quarter (¼) of the southwest quarter (¼) of section 4, township 17 north, range 7 east (and other lands).

Now, therefore, for and in consideration of one and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Kemp & Hayden, assignees, in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an individual one-half interest in the right, title, and interest of the assignees in and to said lease as to the SE. ¼ of SW. ¼ of section 4, township 17 north, range 7 east, subject to the approval of the Secretary of the Interior, to Gypsy Oil Company, a corporation of Tulsa, Oklahoma.

In witness whereof the said assignees have hereunto set their hands and seals this seventh day of May, 1913.

KEMP & HAYDEN.
By E. R. KEMP,
JNO. F. HAYDEN.

ACKNOWLEDGMENT OF CORPORATION.

STATE OF ———,
——— *County, ss:*

Before me, a ——— in and for said county and State, on this ——— day of ———, 191—, personally appeared ——— to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its ——— and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

——— ———.
——— ———.

My commission expires ———, 191—.

[Endorsement stamp: Received Union Agency Jul. 21, 1913. Enclosure to Dept. No. 2472.]

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, F. C. Hays, a notary public in and for said county and State, on this seventh day of May, 1913, personally appeared E. R. Kemp and John F. Hayden to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

[SEAL.] F. C. HAYS,
Notary Public.

My commission expires November 19th, 1915.

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 7th day of May, 1913.

[SEAL.] GYPSY OIL COMPANY,
M. M. DOAN, *General Agent.*

Attest: [Illegible], *Assistant Secretary.*

CONSENT OF SURETY.

The ——— of ———, surety for ——— on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

26 Dated at ——— this — day of ————, 191—

DEPARTMENT OF THE INTERIOR.
Washington, D. C., Jul. 14, 1913.

Approved: Subject to the conditions attached to the lease.
A. A. JONES,
First Assistant Secretary. W. C. P.

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:
Received Union Agency May 16, 1913. Enclosure No. 27824.
Office of Indian Affairs. Received Jul. 7, 1913. 84133.
Ent.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and

between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, which lease has been assigned to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden covering the following-described lands in the Creek Nation, Oklahoma:

The southeast quarter (¼) of the southwest quarter (¼) of section 4, township 17 north, range 7 east (and other lands).

Now, therefore, for and in consideration of one and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Kemp & Hayden, the assignees, in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the right, title, and interest of the assignees in and to said lease as to the SE. ¼ of SW. ¼ of section 4, township 17 N. range 7 E., subject to the approval of the Secretary of the Interior to Toxaway Oil Company, a corporation of Tulsa, Oklahoma.

27 In witness whereof, the said assignees have hereunto set their hands and seals this 15th day of May, 1913.

KEMP & HAYDEN.
By E. R. KEMP,
JNO. F. HAYDEN.

ACKNOWLEDGMENT OF CORPORATION.

STATE OF ------
------ *County, ss:*

Before me, a ---- in and for said county and State, on this ---- day of ------, 191--, personally appeared ------ to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its ------ and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

My commission expires ----------, 191--

[Endorsement stamp: Received Union Agency, Jul. 21, 1913. Enclosure to Dept. No. 2472.]

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, F. C. Hays, a notary public in and for said county and State, on this 15th day of May, 1913, personally appeared E. R. Kemp and John F. Hayden to me known to be the identical persons who executed the within and foregoing instrument, and acknowl-

edged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

[SEAL.] F. C. HAYS,
Notary Public.

My commission expires November 19th, 1915.

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

28 In witness whereof, the said assignee has hereunto set its hand and seal this 15th day of May, 1913.

[SEAL.] TOXAWAY OIL COMPANY,
By E. R. KEMP, *President.*

Attest:

R. S. SHERMAN, *Secretary.*

CONSENT OF SURETY.

The ------ of ------, surety for ------ on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

Dated at ------ this ------ day of ------, 191--

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jul. 14, 1913.

Approved: Subject to the conditions attached to the lease.
A. A. JONES, *First Assistant Secretary.* W. C. P.

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:

Ent. 3707.
Received Union Agency Mar. 13, 1914. Enclosure No. 16210.
Office of Indian Affairs. Received Apr. 18, 1914. 42255.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

The southeast quarter (¼) of the southwest quarter (¼) of section 4, township 17 north, range 7 east (and other lands).

29 Now, therefore, for and in consideration of one and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Toxaway Oil Company, a corporation, the assignee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the undivided one-half interest in the right, title, and interest of the assignee in and to said lease, as the same applies to the SE. ¼ of SW. ¼ of Sec. 4, Twp. 17 N. range [7 E.], subject to the approval of the Secretary of the Interior, to Sperry Oil & Gas Company, a corporation, of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof the said lessee has hereunto set its hand and seal, this seventh day of March, 1914.

[SEAL.] TOXAWAY OIL COMPANY,
By E. R. KEMP, *Pres.*

Attest:

MARY M. HOKE, *Secy.*

ACKNOWLEDGMENT OF CORPORATION.

STATE OF OKLAHOMA,
Tulsa County, ss:

Before me, a notary public in and for said county and State, on this 7th day of March, 1914, personally appeared E. R. Kemp to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[SEAL.] JOHN SCHMITZ.

My commission expires *My commission expires* Jan. 26, 1916.

(Endorsement stamp:) Received May 12, 1914. Union Agency. Dept. No. 2120.

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF ------,
County of ------, *ss:*

Before me, ------ in and for said county and State, on this -- day of ------, personally appeared ------ to me known to be the identical person-- who executed the within and foregoing instrument, and acknowledged to me that -- executed the same as ---- free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires ----------

30 ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 11th day of March, 1914.

[SEAL.] SPERRY OIL AND GAS CO.,
By C. F. BISETT, *Vice Pres.*

Attest:

GEO. E. WISK, *Secty.*

CONSENT OF SURETY.

The ------ of ------; surety for ------ on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made. ------

Dated at ------ this -- day of ------, 191--

DEPARTMENT OF THE INTERIOR.
Washington, D. C., May 4, 1914.

Approved: Subject to the conditions attached to the lease.

LEWIS C. LAYLIN,
Assistant Secretary.

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:
Received Supt. 5 Civic Tribes Feb. 24, 1916. Enclosure to No. 18810.
Office of Indian Affairs. Received May 13, 1916—52026.]
Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912,
31 entered into by and between The Kathleen Oil Company, a corporation, of Tulsa, Oklahoma, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

N. ½ of SW. ¼ and SW. ¼ of SW. ¼ of Sec. 4, Twp. 17 north, range 7 east.

Now, therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, the said The Kathleen Oil Company, the lessee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all the right, title, and interest of the lessee in and to said lease, subject to the approval of the Secretary of the Interior to Okla Oil Company, a corporation, of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set ____ hand and seal, this 12th day of February, 1916.

[SEAL.] THE KATHLEEN OIL COMPANY,
By H. F. SINCLAIR, *President.*

Attest:

E. W. SINCLAIR, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

STATE OF OKLAHOMA,
Tulsa County, ss:

Before me, notary public in and for said county and State, on the 12th day of February, 1916, personally appeared H. F. Sinclair to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[SEAL.] PAUL KONZ,
Notary Public.

My commission expires January 21, 1917.

Duplicate. U. S. Fid. & Guar. Co.
[Endorsement stamp: Received Supt. 5 Civ. Tribes, May 27, 1916. Enclosure to Dept. No. 3449.]

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF ------,
County of --, *ss:*

Before me, ------ in and for said county and State, on this ------ day of ------, personally appeared ------ to me known to be the identical person-- who executed the within and foregoing
32 instrument, and acknowledged to me that ------ executed the same as ------ free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires ----------

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 21st day of February, 1916.

[SEAL.]

OKLA OIL COMPANY.
By FRANK HASKELL,
Vice President.

Attest:

C. E. HANE, *Secretary.*

CONSENT OF SURETY.

The ------ of ------; surety for ------ on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made ----------

Dated at ------, this ------ day of ------, 191--

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 22, 1916.

Approved: Subject to the conditions attached to the lease.

BO SWEENEY,
Assistant Secretary.

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of

the surety company. The consent of the surety company need only be executed on the ORIGINAL COPY of the assignment.

Duplicate.

33 Lease No. 22731.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jul. 14, 1913.

The assignment of this lease insofar as pertains to an undivided one-half interest in the SE./4 of the SW./4 of Sec. 4, T. 17 N., R. 7, by Kemp & Hayden to the Gypsy Oil Co., is APPROVED, with the understanding and provision that no rights, claims, or equities, as against future action by or under authority of Congress respecting oil or gas pipe line companies, shall be predicated upon this approval and subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation or royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES,
First Assistant Secretary. WCP.

[Endorsement stamp: Received Supt. 5 Civ. Tribes, May 27, 1916. Enclosure to Dept. No. 3449.]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 22, 1916.

The assignment of this lease by the Kathleen Oil Company to the Okla. Oil Company insofar as pertains to the N. ½ SW. ¼ and SW. ¼ SW. ¼, Sec. 4, T. 17, R. 7, is APPROVED, effective only from date of approval, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

BO SWEENEY,
Assistant Secretary.

U. S. Fid. & Guar. Co.

[Endorsement stamps:

Office of Indian Affairs. Received May 13, 1916. 52026.
Received May 12, 1914. Union Agency, Dept. No. 2120.]

Lease No. 22731.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 4, 1914.

The assignment of an undivided one-fourth interest in this lease by Toxaway Oil Co., assignee of Kemp & Hayden, as-
34 signees of The Kathleen Oil Co., lessee, to Sperry Oil & Gas

Co., as to SE./4 of SW/4 of 4–17–7, containing 40 acres, is APPROVED, effective only from date of approval, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary.

[Endorsement stamps:

Office of Indian Affairs. Received Apr. 18, 1914. 42255.
Received May 12, 1914. Union Agency. Dept. No. 2120.]

Lease No. 22731.
DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jul. 14, 1913.

The assignment of this lease insofar as pertains to an undivided one-half interest in the SE. ¼ of SW./4 of Sec. 4, T. 17 N., R. 7 E., by Kemp & Hayden to the Toxaway Oil Co. is APPROVED, subject to the orders and regulations of this department now existing or hereafter to be promulgated The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES,
First Assistant Secretary. W. C. P.

Lease No. 22731.
DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 24, 1913.

This assignment of this lease by the Tartar Oil Co. to The Kathleen Oil Co. insofar as pertains to the SW./4 of the SW./4 of Sec. 4, T. 17 N., R. 7 E., is APPROVED, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

35 [Endorsement stamp: Office of Indian Affairs. Received Feb. 21, 1913. 23610.]

118 Lease No. 22731.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jan. 4, 1913.

The assignment of this lease by The Kathleen Oil Company to the Tartar Oil Company, as to the SW. ¼ of the SW. ¼ of sec. 4, T. 17 N., R. 7 E., containing 40 acres, is APPROVED, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamps:

Office of Indian Affairs. Received Dec. 27, 1912. 132434.
Office of Indian Affairs. Received Feb. 21, 1913. 23610.]

Lease No. 22731.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Nov. 29, 1912.

The assignment of this lease in so far as pertains to SE./4 of SW./4 of sec. 4, Twp. 17 N., R. 7 east by The Kathleen Oil Co. to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden is APPROVED, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

Endorsed: Filed Aug. 30, 1916, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

And, to wit, on the 14th day of September, A. D. 1916, the court filed its opinion herein, which is in words and figures as follows:

36 *Opinion.*

CAMPBELL, D. J.:

On April 13, 1912, Eastman Richard, as the guardian of Samuel Richard, a minor full-blood member of the Creek Tribe of Indians, executed to the Kathleen Oil Company an oil and gas lease for the term of ten years, and as much longer as oil and gas might be found in paying quantities, covering the southwest quarter of section 4, township 17 north, range 7 east, in Creek County, Oklahoma, being

the allotment of said Samuel Richard as such Creek full blood Indian. This lease was duly approved by the Acting Secretary of the Interior on June 8, 1912, and the lessee or its assigns have since operated the same for oil and gas, and a large amount of royalties have accrued now held by the defendants as they contend in their official capacity. Samuel Richard died January 24, 1916, while still a minor. A portion of the funds so held accruing prior to his death and the remainder since his death. The plaintiffs as administrators of said Samuel Richard, deceased, are prosecuting this suit to recover this fund from the defendants and to restrain them from attempting to collect future royalties, or interfere with plaintiffs in the collection of same.

At the time this lease was executed the restrictions had not been removed from this land (section 1, Act of May 27, 1908, 35 Stat. 312), and hence, as provided in section two of the same act, this oil and gas lease could only be made with the approval of the Secretary of the Interior under rules and regulations provided by him. It was provided in the lease that the prescribed royalty should be paid to the United States Indian superintendent, Union Agency at Muskogee, Oklahoma, which officer is now the defendant Parker, with title as Superintendent for the Five Civilized Tribes. The lease contained the further provisions:

"8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: Provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease."

"12. In event restriction on alienation shall be removed from all the leasehold premises described above, this lease shall be re-
37 leased from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian superintendent shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the Eufaula National Bank, of Eufaula, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease."

At the time of the execution of the lease the following were among the rules and regulations promulgated by the Secretary relating to oil and gas leases:

"20. All royalties, rents, or payments due under leases which have been or may be approved by the Secretary of the Interior shall be paid to the United States Indian agent at Union Agency, Muskogee,

Okla., or to such other preson as may be designated by the Secretary of the Interior, for the benefit of the various lessors, or, in cases of minors and incompetents, shall be deposited as hereinafter specified. (See amendment of July 23, 1910, as to minors and incompetents, p. 31.) No royalties on such leases shall be paid by the lessee direct to the lessors or their representatives."

"25. All royalties, rents, or payments accruing under any lease made for or on behalf of any minor or incompetent shall be held by the United States Indian superintendent, Union Agency, or such other disbursing officer as may be designated by the Secretary of the Interior, to the credit of the guardian (or curator) of such minor or incompetent and shall be paid to such guardian (or curator) upon voucher executed by him and approved by the judge of the county (probate) court having jurisdiction of the estate of such minor or incompetent (the form of such voucher to be prescribed by the department), or upon authority of such court in the form of an order satisfactory to said superintendent or other officer in charge of the Union Agency."

The lease in question was approved June 8, 1912, and on November 29, 1912, rule 25 above quoted was amended by adding thereto the following provision:

38 "Provided, however, that the said superintendent or other officer in charge of the Union Agency is authorized in his discretion, where considered for the best interests of any adult, minor, or incompetent lessor, or his or her heirs, for whose account royalties, rents, or payments accruing under any lease have been paid to said superintendent, to withhold the disbursement of such royalties, rents, or payments, wholly or in part, from any such adult, or guardian or curator of any such minor or incompetent, or his or her heirs, until such time or times as the payment thereof is considered best for the benefit of said lessor, or his or her heirs."

It is conceded that the plaintiff, Eastman Richard, who is the father of Samuel Richard, deceased, is his sole heir and, therefore, inherits the land covered by the lease. Eastman Richard is a duly enrolled member of the Creek Tribe of the full blood. Therefore he can not convey this land he inherited without the approval of the county court having jurisdiction of the settlement of the estate of the deceased, as provided by section 9 of the act of May 27, 1908, supra, reading:

"That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land; provided, that no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee."

Hence the land is still subject to governmental restriction upon alienation in the hands of this full-blood heir.

Tiger v. Western Investment Co., 221 U. S. 286; Marcy v. Board of Commissioners (Okla.), 144 Pac. 611; U. S. v. Shock, 187 Fed. l. c. 873.

There can be no question of the power of the Secretary of the Interior to prescribe the foregoing rules and regulations, so far as they relate to departmental control of accruing royalties, during the life of the lessor, Samuel Richard. In United States v. Thurston County, Nebraska, 143 Fed. 287, Judge Sanborn, speaking for the Circuit Court of Appeals, said:

"The act of 1902 authorized these heirs to sell and convey
39 their inherited lands only when the proposed sales were approved by the Secretary of the Interior. It thereby vested in the Secretary plenary power to permit or to forbid the sales proposed. The whole is greater than any of its parts, and includes them all, and the authority to allow or to prohibit proposed sales necessarily included the power to consider and determine the terms and conditions on which such sales should be approved. By rules and regulations approved October 4, 1902, and amended September 16, 1904, and May 25, 1905, the Secretary provided that owners of inherited Indian lands might be permitted to sell them on condition that they agreed that the proceeds of such lands should be placed in one or more banks, which should furnish satisfactory bonds to guaranty the safety of the deposits, to the credit of each heir in proper proportion, subject to the checks of such heirs only when approved by the agent or officer in charge for amounts not exceeding $10 to each in any one month, and subject to their checks for larger amounts only when approved by the agent specifically authorized by the Commissioner of Indian Affairs. The acts of Congress authorized the Secretary to make these regulations for the purpose of carrying into effect the act of 1902, and, when made, they had the force of statutory enactments. Rev. St. Nos. 441, 465 (U. S. Comp. St. 1901, pp. 252, 264); U. S. v. Eaton, 144 U. S. 688, 12 Sup. Ct. 764, 36 L. ed. 591; Wilkins v. U. S., 96 Fed. 837, 37 C. C. A. 588 The Indians whose rights are under consideration made the sales of their lands subject to the conditions prescribed by these rules. * * *

"As the Secretary of the Interior was empowered to permit or forbid the sales of these inherited Indian lands, he had authority to determine upon what conditions he would allow such sales, and to prescribe and enforce the terms specified in his regulations upon this subject."

But it is urged that upon the death of Samuel Richard the jurisdiction of the Secretary to control the royalties arising under this lease ceased. It is pointed out that by virtue of Section 9 of the Act of May 27, 1908, above quoted, had the land not been leased before Samuel Richard's death Eastman Richard, with the approval of the court having jurisdiction of the settlement of Samuel Richard's estate, could have made an oil lease covering the lands providing for

the payment of the royalties direct to him without any supervision on the part of the Secretary of the Interior. But at the time the lease was made, or at any time thereafter during the life time of Samuel Richard, the Secretary had the power to prescribe any
40 conditions as to control of the royalty funds having reasonable relation to the supervisory control and guardianship asserted by the Government. What the policy of the Government then was, and still is, with regard to such control and guardianship over full blood Indians and their full blood heirs, pertaining to allotted and inherited lands, is expressed in the act of Congress of May 27, 1908, supra. Measured by that act I conclude that the Secretary acted within his province and power when on November 29, 1912, he promulgated the amendment to section 25 of the applicable rules and regulations whereby the defendants, in their official capacity, were authorized in their discretion where considered for the best interest of the minor Samuel Richard, or his full blood heir Eastman Richard for whose account the royalties in controversy have been paid to the defendants, to withhold the disbursement thereof, wholly or in part, until such time or times as the payment thereof is considered best for the benefit of said Eastman Richard the full blood heir. If that be true this action must faail. It is not a question here as to whether the defendants in their official capacity are wisely exercising the discretion reposed in them. It follows that decree must enter for defendants at plaintiffs' cost.

RALPH E. CAMPBELL, *Judge.*

(Endorsed:) Filed Sep. 14, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to wit, on the 21st day of September, A. D. 1916, the same being one of the days of a special session of the United States District Court for the Eastern District of Oklahoma, held at Muskogee, Oklahoma, court met pursuant to adjournment. Present and presiding the Honorable RALPH E. CAMPBELL, Judge.

Among the proceedings had on this day is the following:

Decree.

On the 12th day of September, 1916, this cause came on for trial by agreement of the parties and on such date the court heard the evidence in this cause and the argument of counsel and thereupon, upon consideration of such evidence and argument, the court being well and sufficiently advised in the premises:

41 It is ordered, adjudged and decreed by the court that the plaintiffs take nothing by this action but that the defendants have and recover from the plaintiffs all costs herein laid out and expended.

For all of which let proper execution issue.

To all of which plaintiffs in open court except and their exceptions are allowed and thereupon the plaintiffs give notice of appeal in open court.

RALPH E. CAMPBELL, *Judge.*

O. K. as to form.

LUCAS & TABOR, *Attys. for Plaintiffs.*

(Endorsed:) Filed Sept. 21, 1916, R. P. Harrison, clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 21st day of September, A. D. 1916, the complainants filed their petition for allowance of appeal together with their assignment of errors, which appeal was by the court allowed. Said petition for allowance of appeal, assignment of errors and order allowing appeal are in words and figures as follows:

Petition for allowance of appeal.

To the Hon. Ralph E. Campbell, District Judge:

The above named plaintiffs, conceiving themselves aggrieved by the order and decree made and entered in the above named and styled cause, on the 12th day of September, 1916, wherein and whereby it was ordered and decreed by the court that the plaintiffs take nothing by this action, but that the defendants have and recover of and from the plaintiffs all costs herein expanded and laid out, does hereby appeal from said order and decree of the said court, so made on the said 12th day of September, 1916, to the United States Circuit Court of Appeals, for the Eighth Circuit, for the reasons specified in the assignments of error filed herein, and said plaintiffs pray that this appeal may be allowed, and that a transcript of the records, papers and proceedings duly authenticated may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

LUCAS and TABOR,
Attorneys for Plaintiffs.

42 (Endorsed:) Filed Sept. 21, 1916. R. P. Harrison, clerk U. S. District Court, Eastern District Oklahoma.

Assignments of error.

Comes now the plaintiffs in the above entitled and styled cause of action and file the following assignments of error, upon which they and each of them will rely upon their prosecution of the appeal from the decree made by this honorable court on the 12th day of September, 1916, in the above entitled cause.

I.

That the United States District Court erred in rendering judgment in favor of the defendants and against the plaintiffs.

II.

That the said court erred in not rendering judgment in favor of plaintiffs and against said defendants.

III.

That the said trial court erred in holding that the defendants are now entitled to withhold from plaintiffs monies accrued as royalties collected from the allotment of Samuel Richard, deceased, prior to the death of the said Samuel Richard.

VI.

That the trial court erred in holding as a matter of law, that the defendants are now entitled to withhold from the plaintiff the monies collected by them as royalty from the allotment of Samuel Richard, deceased, which accrued and have been collected since the death of said Samuel Richard.

V.

That the trial court erred in holding that the lands constituting the allotment of Samuel Richard, deceased, was and is restricted, after the death of the said allottee.

Wherefore said plaintiffs pray that the judgment of the said court be reversed, and that a judgment be rendered in this cause as prayed for in plaintiff's amended petition filed herein.

LUCAS and TABOR,
Attorneys for Plaintiffs.

43 (Endorsed:) Filed Sept. 21, 1916. R. P. Harrison, Clerk U. S. District Court, Eastern District Oklahoma.

Order allowing appeal.

Upon motion of Lucas & Tabor, counsel for plaintiffs, Eastman Richard and R. D. Martin, as coadministrators of the estate of Samuel Richard, deceased, and their petition for an order allowing an appeal, together with assignments of error being filed herein,

It is ordered that an appeal to the United States Circuit Court of Appeals, for the Eighth Circuit, from the final decree heretofore rendered and filed in this cause on the 12th day of September, 1916, be and the same is hereby allowed, and that a certified transcript of the records, papers and proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals, for the Eighth Circuit, at St. Louis, Missouri.

It is further ordered that the bond on appeal be fixed in the sum of $500.00, the same to act as a bond for costs and damages on Appeal.

RALPH E. CAMPBELL, *Judge.*

(Endorsed:) Filed Sept. 21, 1916. R. P. Harrison, Clerk U. S. District Court, Eastern District Oklahoma.

And, to wit, on the 21st day of September, A. D. 1916, plaintiffs and defendants, by their solicitors of record, filed stipulation as to record and evidence on appeal, which was approved by the court, said stipulation and approval of the court being in words and figures as follows:

Stipulation as to record and evidence on appeal.

On this the 21st day of September, 1916, there having been duly filed in this cause petition for order allowing appeal and an order allowing appeal having been duly entered by the court, cost bond having been filed and approved and assignment of errors duly filed and notice of appeal having been heretofore duly given in open court, the plaintiffs, by their attorneys, and the defendants, by their attorneys, now, in open court, stipulate and agree and file this stipulation and agreement subject to the approval of the court.

44 It is agreed that, for the purposes of appeal, the record in this cause shall consist of the amended petition of plaintiffs, the answer of defendants, the decree and opinion of the court, and this stipulation, together with petition for appeal, order allowing appeal and assignment of errors, and that plaintiffs may file præcipe for printing of record, in accordance with this agreement, without further notice.

It is agreed that the undisputed evidence in this case disclosed that Samuel Richard was, during his lifetime, a full-blood member of the Creek Tribe of Indians, who received an allotment of land properly described in plaintiffs' petition; that an oil and gas lease was duly and properly executed thereon by the guardian of the said Samuel Richard, who was a minor, and that said oil and gas lease was duly approved by the probate court, as required by the laws of the State of Oklahoma, and was, in the month of June, 1912, approved by the Secretary of the Interior, as required by the laws of the United States; that operations under said lease began and the royalties and rents accruing under the said lease were paid to the defendants, who received the same and have, at all times since, held the same, keeping an account of the receipts under such lease, showing the amounts of money received and credited to the account of Samuel Richard, which money was received by them pursuant to the terms of said lease and which money they claimed to be entitled to hold only by reason of their official character. That defendants make no claim of any personal interest in said sum.

That, on the 24th day of January, 1916, the said Samuel Richard died, and that he left surviving him, as his nearest relatives and members of his immediate family, the following persons:

Eastman Richard, his father, Jeannetta Richard, his sister, and Rina Richard, his sister, all of whom are duly enrolled full-blood members of the Creek Tribe of Indians, and to one or all of whom, as an inheritance from the said Samuel Richard, the said land now belongs.

That Eastman Richard and R. D. Martin are the duly appointed, qualified and acting administrators of the estate of the said Samuel Richard, deceased.

It is further agreed that, at the date of the trial, the defendants had in their possession the sum of $216,154.16, a portion of which money was paid to the defendants as royalties prior to the death of the said Samuel Richard, and the remaining portion as royalties subsequent to the death of the said Samuel Richard.

LUCAS & TABOR,
Attorneys for Plaintiffs.
D. H. LINEBAUGH,
United States Attorney,
PAUL PINSON,
Special Assistant to United States Attorney,
Attorneys for Defendants.

The above stipulation as to the matters to be contained in the record for appeal in this cause and as to the evidence in this cause for the purpose of appeal, is hereby approved this the 21st day of September, 1916.

RALPH E. CAMPBELL, *Judge.*

(Endorsed:) Filed Sept. 21, 1916. R. P. Harrison, Clerk U. S. District Court, Eastern District Oklahoma.

And, to wit, on the 21st day of September, A. D. 1916, the plaintiffs filed notice and election as to printed transcript, and acknowledgment of service thereof, which are in words and figures as follows:

Praecipe.

To the Honorable R. P. Harrison, clerk of the above named court:

You are hereby notified that Eastman Richard and R. D. Martin, as co-administrators of the estate of Samuel Richard, deceased, having appealed from the decree rendered against them in the above entitled cause, elect to have a transcript of the record in said cause printed under your official supervision, under the act of Congress of February 13, 1911, and respectfully request that the transcript in said cause be printed as required by law, under your

direction, in accordance with this election, and you are requested to make a transcript in the above entitled cause, to be printed and filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to the appeal allowed in said cause, and to include in said transcript of record the following and no other papers or exhibits:

1. Amended petition.
2. Answer of defendants.
3. Opinion of the court.
4. Decree.
5. Petition for order allowing appeal.
6. Assignment of errors.
7. Order allowing appeal.
8. Stipulation of counsel as to pleading and evidence material for appeal.
9. This præcipe and acceptance thereof.
10. Clerk's certificate.

LUCAS and TABOR,
Attorneys for Plaintiffs.

We, the undersigned, attorneys for the defendants, appellees on appeal herein, do hereby acknowledge receipt of the above designation of parts of the record necessary for the consideration of the errors assigned by the appellants, and waive the designation of any further part, or parts, of the records, hereby agreeing that the above includes all the parts of said record necessary for the consideration of the errors assigned by the appellants, and agree that said record shall be printed under the supervision of the clerk of the United States District Court for the Eastern District of Oklahoma.

Dated this 21st day of September, 1916.

D. H. LINEBAUGH,
United States Attorney.
PAUL PINSON,
Special Assistant to the United States Attorney,
Attorneys for Defendants.

(Endorsed:) Filed Sep. 21, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

47 *Certificate of clerk.*

UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, v. Gabe E. Parker, and W. M. Baker, and Gabe E. Parker, as Superintendent for

the Five Civilized Tribes, and W. M. Baker, as Cashier for the Five Civilized Tribes, No. 2322 Equity, as was ordered by præcipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court at my office, in the City of Muskogee, this 28th day of September, 1916.

[SEAL.]

R. P. HARRISON, *Clerk.*
By L. S. TRIMBLE, *Deputy.*

Filed Sept. 30, 1916. John D. Jordan, Clerk.

48 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

Appearance of counsel for appellants.

United States Circuit Court of Appeals, Eighth Circuit.

No. 4799.

EASTMAN RICHARD and R. D. MARTIN, COADMINISTRATORS, etc., Appellants,
vs.
GABE E. PARKER, ET AL.

The clerk will enter my appearance as counsel for the appellants.

J. B. LUCAS,
Checotah, Okla.
BRITTON H. TABOR,
Checotah, Okla.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 3, 1916.

Appearance of counsel for the appellees.

The clerk will enter my appearance as counsel for the appellees.

PAUL PINSON,
Special Asst. U. S. Atty., Muskogee, Okla.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 22, 1917.

49 *Order of submission.*

December Term, 1916. Monday, January 22, 1917.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Britton H. Tabor for appellants, con-

tinued by Mr. Paul Pinson for appellees and concluded by Mr. J. B. Lucas for appellants.

Thereupon, this cause was submitted to the court on the transcript of the record from said district court and the briefs of counsel filed herein.

Opinion.

United States Circuit Court of Appeals, Eighth Circuit.

No. 4799.—May Term, A. D. 1917.

EASTMAN RICHARD, et al., ADMINISTRATORS, appellants, *vs.* GABE E. PARKER, et al., APPELLEES.	Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Mr. Britton H. Tabor and Mr. J. B. Lucas for appellants.

Mr. Paul Pinson, Special Assistant to United States Attorney (Mr. D. H. Linebaugh, United States Attorney, and Mr. W. P. McGinnis, Special Assistant to United States Attorney, were with him on the brief), for appellees.

Before Carland and Stone, circuit judges, and Munger, district judge.

Munger, district judge, delivered the opinion of the court.

Samuel Richard, a minor, was a full-blood citizen of the Creek Nation of the Five Civilized Tribes of Indians, residing in Oklahoma. He held an allotment of 160 acres of land. On April 13, 1912, acting through his guardian, he executed an oil and gas lease of this land to the Kathleen Oil Company. The lease was approved by the probate court and by the Secretary of the Interior. On January 24, 1916, and while yet a minor, Samuel Richard died, and thereafter appellants were appointed as his administrators. The sole heir of Samuel Richard is his father, Eastman Richard, who is one of the administrators.

The lease provides for a payment to the United States Indian superintendent, for the use of the lessor, of a royalty on the proceeds of oil and gas obtained from the land. The lessee and its assigns
51 have extracted large quantities of oil from the land, both before and after the death of the lessor, and have paid the superintendent, as royalties, the sum of $216,145.16. The greater portion of this amount was paid during the lifetime of the lessor. This suit was brought by the administrators of Samuel Richard against the superintendent and cashier of the Five Civilized Tribes to recover this money and to restrain them from collecting royalties further under the lease.

Under the original Creek treaty (act of Mar. 1, 1901, 31 Stats. 861) and the supplemental Creek treaty (act of Jun. 30, 1902, 32 Stats. 500) the alienation of allotted lands was forbidden for a fixed period, without the approval of the Secretary of the Interior. By subsequent acts of Congress (act of Apr. 21, 1904, 33 Stats. 189; act of Apr. 26, 1906, 34 Stats. 137; act of May 27, 1908, 35 Stats. 312) certain classes of beneficiaries were released from the restrictions upon alienation, but the land of Samuel Richard, as a minor, was subject to restrictions upon alienation during his lifetime. At the time of the execution of the lease to the Kathleen Oil Company, section two of the last mentioned act of Congress contained this provision:

"That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: Provided, That leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise."

In the lease appeared this condition:

"In event restriction on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian
52 superintendent shall thereafter be made to lessor or the then owner of said lands in person or be depoosited to the credit of said lessor or his assigns at the Eufaula National Bank, of Eufaula, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease."

The lease recited that it was subject to the regulations of the Secretary of the Interior then or thereafter in force. The regulations promulgated by the Secretary provided for the payment to the United States Indian agent of all royalties accruing under any lease made on behalf of a minor and for the retention of these funds by the superintendent, or other designated disbursing officer, to the credit of the guardian of the minor. The superintendent was authorized by these regulations to withhold the disbursement of this money until it was considered for the interest of the minor or his heirs that it should be paid. The question presented for decision is whether the restrictions in the lease and in these regulations are

still in force, or were they abrogated by that portion of section nine of the act of May 27, 1908, which reads as follows:

"That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: Provided, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee:"

In the acts which have been cited, Congress has manifested its intention gradually to release governmental control over the lands of those members of the Five Civilized Tribes who were deemed capable of the management of their own property. The act of May 27, 1908, very greatly enlarged the classes of thoes who were left free to deal with their allotments. In the committee reports to each house of Congress, accompanying the bill, it was stated that one object of the bill was to release about eight million acres, or one-half, of the restricted allotments from further supervision by the United States, over its alienation. Among other provisions for such release is that found in section nine of the act, which has been quoted above. The language of this section seems clear and definite.

4 "The death of an allottee removes all restrictions over the alienation of his land, other than a homestead, except that no conveyance of any interest in the land by a full-blood Indian heir is valid unless approved by the proper probate court. No exception was made because of existing leases of the land, unless a lease had been executed but had not been approved by the Secretary of the Interior; in that case the lease was subject to the approval of the secretary (section three). Congress knew that many leases of Indian lands were outstanding, for it had authorized their execution by previous acts, and by section three of this act it permitted allottees of land from which restrictions were removed to cancel the leases upon agreement with the lessees. The omission to reserve any other supervision than that by the probate court over conveyances by full-blood heirs of allottees is rendered more significant by the fact that in the next proviso in section nine the right of supervision by the Secretary of the Interior over another class is expressly retained. Notwithstanding the fact that Congress left but one restriction upon the alienation of this land, the control of the probate court, appellees claim that other restrictions exist to the extent that the Secretary of the Interior may collect the royalties under the lease made by the deceased allottee and may retain from his administrators the royalties collected before and since his death. In support of this claim appellees say that the Secretary of the Interior had the authority at the time this lease was made to make regulations as to the approval of the leases executed by minor allottees which had the force and effect of law; that these regulations provided for the impounding of the royalties and for the payment to the lessor, or his heirs, at the discretion of the Secretary as to time and amount; that the lease by Samuel Richard provided that it should be released

from the grasp of these regulations only when all restrictions should be removed; and that as one restriction still exists, because the consent of the probate court must be obtained to validate a conveyance by the heir, all restrictions have not been removed, and, therefore, the terms of the lease and of the regulations of the Secretary remain in force as to control of the royalties. The answer to this contention is that the powers of the Secretary of the Interior over this land are only derivative. These supervisory powers, as expressed either in the regulations of his department or in the lease cannot survive the grant under which they were made, and when Congress declared that all restrictions upon alienation, except one, were removed, none of the powers reserved in the regulations and lease longer remained operative. By the enactment of this statute the right was conferred upon the heirs of the allottee to make a conveyance of the allotment upon the one condition of its approval by the proper probate court, and the approval of the Secretary of the Interior was unnecessary. United States v. Knight, 206 Fed. 145; Harris v. Gale, 188 Fed. 712; Ma Harry v. Eastman, 29 Okla. 46, 116 Pac. 935; Nicholas v. Cornelius, 152 Pac. 831; Hope v. Foley, 157 Pac. 727.

The removal of all restrictions upon alienation included the release of control over the collection of royalties under the lease, after the death of the allottee, as the "royalties to accrue were a part of the estate remaining in the lessor." United States v. Noble, 237 U. S. 74–80.

While the royalties that had been collected and withheld by the Secretary of the Interior prior to the death of the lessor, were personal property, United States v. Noble, supra, the control of these funds was an incident of the power to approve of the lease, and when Congress declared its purpose to allow the heirs of allottees to alienate the land free from all restrictions, we think it was the intention of Congress to dispense with further supervision by the Secretary of the Interior over the funds that had been collected under that power. In other words, Congress did not intend, in allowing the heirs of allottees to alienate their land free from all restrictions, subject only to the approval of the proper probate court, to leave the heir in the same position as the intestate was before his death. The legislation meant something. Neither did Congress intend to postpone the enjoyment of the estate by the heir until after he had sold it with the approval of the probate court, which would be the only way he could remove the only restriction left. For these reasons the decree of the lower court is reversed, and the cause is remanded with directions to enter a decree for complainants in accordance with this opinion.

Stone, circuit judge, dissents.

Filed August 21. 1917.

55 *Decree.*

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917. Monday, September 3, 1917.

EASTMAN RICHARD and R. D. MARTIN, COADMINISTRATORS of the estate of Samuel Richard, deceased, Appellants,
vs.
GABE E. PARKER and GABE E. PARKER, AS SUPERINTENDENT for the Five Civilized Tribes, W. M. Baker, and W. M. Baker, as cashier for the Five Civilized Tribes. } No. 4799.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the district court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said district court, in this cause be, and the same is hereby, reversed without costs to either party in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said district court with directions to enter a decree for complainants in accordance with the opinion of this court.

September 3, 1917.

56 *Petition for appeal and assignment of errors on appeal to Supreme Court, U. S.*

Gabe E. Parker, Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellees, as above named, but appellants herein, by their solicitors of record, W. P. McGinnis, United States attorney for the Eastern District of Oklahoma, and Paul Pinson, special assistant to the United States attorney for the Eastern District of Oklahoma, conceiving themselves aggrieved by the decision and decree of the United States Circuit Court of Appeals made in the above entitled cause on the 3rd day of September, 1917, do hereby appeal from said decision and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, filed herewith, and pray that this appeal may be allowed and that a transcript of the records and proceedings in said cause, with all things concerning the same duly authenticated, may be sent to the Supreme Court of the United States.

W. P. MCGINNIS,
United States Attorney.
PAUL PINSON,
Special Assistant to the United States Attorney,
Solicitors for Appellants.

Assignment of errors.

Now come Gabe E. Parker, Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellants, by their solicitors of record, W. P. McGinnis, United States attorney for the East-
57 ern District of Oklahoma, and Paul Pinson, special assistant to the United States attorney for the Eastern District of Oklahoma, and say, that in the record and proceedings in this cause there is manifest error and that the United States Court of Appeals for the Eighth Circuit erred in this, to wit:

First. The court erred in reversing the judgment and decree of the district court of the United States for the Eastern District of Oklahoma, made and entered on the 21st day of September, 1916, and remanding said case to the said United States District Court for the said Eastern District of Oklahoma with directions to enter a decree for the appellees herein.

Second. The court erred in not sustaining the decree of the United States District Court for the Eastern District of Oklahoma, made and entered for the appellants herein on the 21st day of September, 1916.

Third. The court erred in holding and deciding and decreeing that the appellees herein, Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, should recover from the appellants the moneys sued for or any portion thereof.

Fourth. The court erred in holding that after the title to the land and moneys in controversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian, and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to retain, control, collect, and disburse the moneys which had accrued prior to the death of said Samuel Richard under the terms of the oil and gas mining lease covering his restricted allotment.

Fifth. The court erred in holding that after the title to the land and moneys in controversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian, and the only
58 heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to retain, control, collect, and disburse the moneys which had accrued since the death of said Samuel Richard under the terms of the oil and gas mining lease covering his restricted allotment.

Sixth. The court erred in holding that after the title to the land in controversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian, and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to supervise the operations carried on under the terms of the oil and gas mining lease covering the restricted allotment of said Samuel Richard, deceased.

Wherefore the appellants pray that such judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit be reversed, and that the Supreme Court of the United States of America render such proper decree as shall conform to the facts disclosed by the record and the law applicable thereto.

W. P. McGINNIS,
United States Attorney.
PAUL PINSON,
Special Assistant to the United States Attorney,
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 28, 1917.

59 *Order allowing appeal to Supreme Court, U. S.*

It is hereby ordered that the appeal in the above entitled cause in the United States Circuit Court of Appeals for the Eighth Circuit be and is hereby allowed as prayed, and it further appearing that the appeal herein is being prosecuted by the United States of America for and on behalf of certain officials of the Department of the Interior, to wit, the superintendent and cashier, respectively, of the Five Civilized Tribes, and answerable herein only in their official capacity, it is further ordered that the said appeal be without bond.

KIMBROUGH STONE,
U. S. Circuit Judge, Eighth Circuit.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 1, 1917.

60 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from and after the date hereof, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, from a judgment rendered in a cause wherein Gabe E. Parker, Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes are appellants and you are appellees, to show cause, if any there be, why the decree reversing the judgment of the United States District Court for the Eastern District of Oklahoma in the above entitled cause, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Kimbrough Stone, U. S. Circuit Judge in and for the Eighth Circuit, this 30th day of November, A. D. 1917.

KIMBROUGH STONE,
United States Circuit Judge, Eighth Circuit.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. September Term, 1917. No. 4799. Eastman Richard et al., appellants, vs. Gabe E. Parker et al. Citation on Appeal to Supreme Court, U. S. Filed Dec. 4, 1917. E. E. Koch, Clerk.

61 *Acceptance of service of citation in appeal.*

In the United States Circuit Court of Appeals for the Eighth Circuit.

EASTMAN RICHARD AND R. D. MARTIN, COADMINISTRATORS of the estate of Samuel Richard, deceased, appellants,
vs.
GABE E. PARKER, GABE E. PARKER AS SUPERINTENENT FOR the Five Civilized Tribes, W. M. Baker and W. M. Baker as cashier for the Five Civilized Tribes, appellees. } No. 4799.

Due and personal service of the citation in appeal in the above-entitled and numbered cause heretofore, on the 30th day of November, A. D. 1917, issued in said cause and signed on that date by the honorable Kimbrough Stone, judge of the United States Circuit Court of Appeals for the Eighth Circuit, and notifying Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, the appellants in said cause, that an appeal has been allowed therein, and that they must appear at the Supreme Court of the United States at Washington, D. C., within thirty days from and after the date thereof, then and there to show cause, if any there be, why the judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit reversing the judgment of the United States District Court for the Eastern District of Oklahoma in said cause should not be corrected and why speedy justice should not be done to the parties in that behalf is hereby acknowledged this 3rd day of December, 1917, on
61½ behalf of the said Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, appellants as aforesaid, by their solicitors of record.

J. B. LUCAS,
and
BRITTON H. TABOR,
Solicitors for Appellants.

61¾ No. 4799. In the U. S. Circuit Court of Appeals for the Eighth Circuit. Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, appellants, vs. Gabe E. Parker, Gabe E. Parker as superintendent for the Five

Civilized Tribes, W. M. Baker and W. M. Baker as cashier for the Five Civilized Tribes, appellees. Acceptance of service of citation in appeal to Supreme Court, U. S. Filed Dec. 4, 1917. E. E. Koch, clerk.

62 *Clerk's certificate.*

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the act of Congress, approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Eastman Richard, et al., etc., were appellants, and Gabe E. Parker, et al., etc., were appellees, No. 4799, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation and original acceptance of service of said citation are hereto attached and herewith returned.

I do further certify that on the fifth day of November, A. D. 1917, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the judges of the District Court of the United States for the Eastern District of Oklahoma.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this sixth day of December, A. D. 1917.

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed on cover:) File No. 26,253. U. S. Circuit Court Appeals, 8th Circuit. Term No. 786. Gabe E. Parker, Gabe E. Parker, as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker, as cashier for the Five Civilized Tribes, appellants, vs. Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased. Filed December 12th, 1917. File No. 26,253.

○

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

October Term, 1916.

No. 565.

GABE E. PARKER, GABE E. PARKER AS SUPERINTENDENT FOR THE FIVE CIVILIZED TRIBES, W. M. BAKER AND W. M. BAKER AS CASHIER FOR THE FIVE CIVILIZED TRIBES, APPELLANTS,

vs.

EASTMAN RICHARD AND S. D. MARTIN, CO-ADMINISTRATORS OF THE ESTATE OF SAMUEL RICHARD, DECEASED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

(22649)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 563.

GABE E. PARKER, GABE E. PARKER AS SUPERINTENDENT FOR THE FIVE CIVILIZED TRIBES, W. M. BAKER, AND W. M. BAKER AS CASHIER FOR THE FIVE CIVILIZED TRIBES, APPELLANTS,

vs.

EASTMAN RICHARD AND R. D. MARTIN, CO-ADMINISTRATORS OF THE ESTATE OF SAMUEL RICHARD, DECEASED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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3 Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May term, 1918, of said court, before the Honorable William C. Hook and the Honorable Kimbrough Stone, Circuit Judges, and the Honorable Martin J. Wade, District Judge.

Attest:

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the fifth day of April, A. D. 1918, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Gabe E. Parker et al., were appellants, and Eastman Richard et al., were appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to wit:

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE RALPH E. CAMPBELL, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

EASTMAN RICHARD and R. D. MARTIN, Co-Administrators of the Estate of SAMUEL RICHARD, Deceased, *Plaintiffs,*

Equity *vs.* **No. 2322**

GABE E. PARKER, and GABE E. PARKER as Superintendent for the Five Civilized Tribes, W. M. BAKER, and W. M. BAKER as Cashier for the Five Civilized Tribes, *Defendants.*

GABE E. PARKER, and GABE E. PARKER as Superintendent for the Five Civilized Tribes, W. M. BAKER, and W. M. BAKER as Cashier for the Five Civilized Tribes, *Appellants,*

vs.

EASTMAN RICHARD and R. D. MARTIN, Co-Administrators of the Estate of SAMUEL RICHARD, Deceased, *Appellees.*

Be It Remembered, That this suit was begun in the District Court of Muskogee County, State of Oklahoma, and came into the United States District Court for the Eastern District of Oklahoma upon Petition and Bond for Removal; the Transcript having been filed in the office of the Clerk of the United States District Court for the Eastern District of Oklahoma on the 18th day of August, 1916, and was given Equity No. 2322.

The original amended petition being in words and figures as follows:

In the District Court in and for Muskogee County, State of Oklahoma, Before Hon. R. P. deGraffenreid, District Judge. Eastman Richard and R. D. Martin, Co-Administrators of the Estate of Samuel Richard, Deceased, Plaintiffs, v. *Gabe E. Parker and Gabe E. Parker as Superintendent for the Five Civilized Tribes; W. M. Baker, and W. M. Baker as Cashier for the Five Civilized Tribes, Defendants.—No. 4971.*

First Amended Petition.

Comes now the plaintiffs herein, Eastman Richard and R. D. Martin, as Co-administrators of the Estate of Samuel Richard, deceased, and for their First Amended Petition, in the above numbered and styled cause (which is filed by and with the consent of the court, and the said defendants, Gabe E. Parker and W. M. Baker), and for causes of action, alleges and states:

1.

That plaintiffs each and both of them, are residents of McIntosh County, Oklahoma; that the defendants are residents of Muskogee County, Oklahoma, and that this court has jurisdiction of this action.

2.

That these plaintiffs, Eastman Richard and R. D. Martin, were by the County Court, McIntosh County, Oklahoma, on, to-wit: Feb. 29, 1916, duly and legally appointed Co-administrators of the estate of Samuel Richard, Deceased, and that on the 29th day of February, 1916, these plaintiffs, as principal, together with the Southern Surety Company, as surety, made, executed and delivered their joint and several Administrator's Bond, according to law, in said cause, in the penal sum of $225,000.00, which said bond was accepted and approved by the County Court, a copy of which said bond is hereto attached, marked Exhibit "A" and made a part hereof. That on the 29th day of February, 1916, Letters of Administration were duly and legally issued by the said County Court of McIntosh County, Oklahoma, as aforesaid, to these petitioners, as Co-Administrators of said estate of Samuel Richard, Deceased, a copy of which said letters of Administration is hereto attached, marked Exhibit "B" and made a part hereof. That these plaintiffs are the legally appointed, qualified and acting Co-Administrators of the Estate of Samuel Richard, Deceased, and as such Co-Administrators these plaintiffs are entitled to collect and receive any and all monies or other personal properties belonging to said estate.

III.

These plaintiffs further allege and state that the said defendants, Gabe E. Parker, was and is, and has been at all times herein mentioned the legally appointed, qualified and acting Superintendent for the Five Civilized Tribes, and that the said defendant, W. M. Baker, was and is and has been at all times herein mentioned, the legally appointed, qualified and acting Cashier for the Five Civilized Tribes, and that said defendants have collected and received, and have at all times herein mentioned, and now have in their possession, custody and control, the sum of One Hundred Seventy-five Thousand, *Eighteen* Hundred and Eighteen Dollars and sixty-seven cents ($175,-818.67) in money belonging to the Estate of Samuel Richard, Deceased. That these plaintiffs are entitled to the possession of all of said monies belonging to the Estate of Samuel Richard, Deceased, as aforesaid, and that the said defendants, each and both of them, as aforesaid, have unlawfully, and do now unlawfully retain in their possession, custody, and control the aforesaid sums of money.

IV.

Plaintiffs further allege and state that their said estate, the said Samuel Richard, was during his lifetime, a full-blood citizen of the Creek Nation, and enrolled upon the Approved Rolls of the Dawes Commission, opposite No. 7668, and that there was duly allotted and patented to the said Samuel Richard, as said allottee of the Creek Tribe of Indians, an allotment of land consisting of 160 acres of land, described as the

> Southwest Quarter (SW4) of Section 4, Township 17 North, Range 7 East, of the Indian Base and Meridian, according to the U. S. Survey thereof, within the State of Oklahoma,

and that these plaintiffs' intestate, the said Samuel Richard, being the owner in fee simple title to the above described 160 acres of land, and being then a minor under the age of 21 years, did, on to-wit: April 13, 1912, by his then legal guardian, Eastman Richard, make, execute and deliver a certain oil and gas mining lease upon the above described lands, to the Kathleen Oil Company, a corporation, as lessee, and that the said lease was duly approved by the proper officials then having jurisdiction thereof, by reason of the said minority of the said Samuel Richard. That under the terms of the said lease, it was and is provided that the lessee agrees to pay or cause to be paid, to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, or his successor, as trustee, for the use and benefit of said lessor, as royalty, the sums of money represent-

ing 12½% of the gross proceeds of the sale of all crude oil extracted from said lands. The original of which said lease is in the possession of said defendants who are hereby notified to produce same at the trial of this cause, or secondary evidence will be introduced as to its contents.

V.

Plaintiffs further allege and state that under the terms of said lease, it was and is provided that in the event the restrictions on alienation shall be removed from the leasehold premises described above said lease shall be removed from the supervision of the Secretary of the Interior, such release to take effect without further agreement from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior, as therein provided, shall cease, and all payments required to be paid to the United States Indian Superintendent, shall thereafter be made to the said lessor, or the then owner of said lands.

VI.

These plaintiffs further allege and state that they have been informed and believe, and therefore charge, that the said defendants, have collected, and have at all times herein mentioned, and have now in their possession, custody and control the sum of $175,818.67, in money belonging to the estate of said Samuel Richard, deceased. That said defendants as Trustees of plaintiffs' intestate and Estate, collected same from the lessees under said lease as royalty due said Estate by reason of the sale of oil as provided for in said lease, and that the dates and various amounts so collected by said defendants is within the personal and peculiar knowledge of said defendants.

VII.

These plaintiffs further allege and state that said Samuel Richard died on January 24, 1916, and thereafter, on to-wit: March 1, 1916, plaintiff by and with the consent of the lessee and owner of said lease, revoked, renounced, cancelled and terminated the appointment of the said defendants as Trustees under said lease to collect the royalties accruing thereunder and terminated said Trusteeship and notified the defendants thereof, and requested that the said defendants pay to these plaintiffs monies then held by them as Trustees of plaintiffs' estate, but that the said defendants did then, and now refuse to surrender possession of the monies collected by them as Trustees of plaintiffs' estate, and refuse to pay same to these plaintiffs. That these plaintiffs are entitled to possession of all monies belonging to estate of Samuel Richard, deceased, which

are being held by said defendants, each and both of them as aforesaid. That said sums of money held by said defendants have by them been and are now illegally held and retained in their possession, custody and control.

VIII.

These plaintiffs further allege and state (in addition to the revocation and termination made by them of the Trusteeship, as hereinabove stated): That by reason of the death of the said Samuel Richard, as aforesaid, on the 24th day of January, 1916, that all restrictions upon the alienation of the lands covered by said lease, were then by operation of law removed beyond under the Acts of Congress, relating and pertaining thereto, and that by reason of the death of said Samuel Richard, that the said monies held by said defendants, and the proceeds accruing from said lease, did then and there (if they were at that time restricted) immediately became unrestricted, and that the said defendants had and have no further jurisdiction or lawful right to hold possession of said sums of money, or any part thereof, and that the said defendants since the death of the said Samuel Richards, as aforesaid, have illegally, unlawfully and without authority of law, held and retained all of the aforesaid sums of money.

IX.

Plaintiffs further allege and state that they have been informed and believe and therefore charge that since the death of the said Samuel Richard on Jan. 24, 1916, as aforesaid, that the said defendants have collected the sum of approximately $50,000.00, the exact amount of which is unknown to plaintiffs, but is within the personal and peculiar knowledge of said defendants, and that unless restrained by proper Order of this court, will continue to collect further sums of money belonging to said estate, the amounts of which are unknown to these plaintiffs, but which is within the personal and peculiar knowledge of defendants, and that the said money so collected by them since the death of the said Samuel Richard, as aforesaid, was illegally collected, and is held by them illegally and without lawful authority. That said defendants should be required to render an accounting to this court (in addition to the above stated sum of $175,818.67) of all monies received and collected by them since Jan. 24, 1916, as aforesaid, as well as an accounting of all monies that may be collected by them until the termination of this suit.

X.

Plaintiffs further allege and state that on March 1, 1916,

and on several occasions thereafter, and prior to the institution of this action, they made both oral and written demands of said defendants for the aforesaid sums of money, and for all monies which they have in their possession, custody or control belonging to the estate of said Samuel Richard, deceased. That said defendants have refused and wholly declined to deliver to these plaintiffs said sums of money, or any part thereof. That these plaintiffs have been entitled to the possession of the same ever since March 1, 1916, as aforesaid, and that they are now entitled to the possession thereof.

Wherefore plaintiffs pray:

(a) That the said defendants, and each and both of them be required to render into this court an accounting of all monies or personal property belonging to the estate of the said Samuel Richard, deceased, which they have in their possession, custody or control.

(b) That the said plaintiffs be decreed a judgment against said defendants, and each and both of them in the sum of $175,818.67, in money, as well as for any and all other monies or personal properties which the court may find that they have in their possession, custody or control, together with interest at the rate of 6% per annum, from March 1, 1916.

(c) That said defendants be restrained from collecting any monies due plaintiffs.

(d) That the plaintiffs do have and recover all costs therein accrued.

(e) That the plaintiffs have all general, special and equitable relief to which they may be justly entitled.

EASTMAN RICHARD and
R. D. MARTIN,
Co-Administrators of Estate of Samuel Richard, Deceased.

By LUCAS & TABOR, *Attys. for Plaintiffs.*

ADMINISTRATOR'S OR EXECUTOR'S BOND.

State of Oklahoma, McIntosh County—ss. *In the Matter of the Estate of Samuel Richard, Deceased.*

Know All Men by These Presents: That we, R. D. Martin, Checotah, Oklahoma, and Eastman Richard, Pierce, Oklahoma, as principals, and Southern Surety Company of Denison, *Oklahoma*, as surety, are held and *firm* firmly bound unto the

State of Oklahoma, in the penal sum of Two Hundred Twenty-five Thousand, and no/100 ($225,000.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

The conditions of the above obligation is such, that Whereas, By order of the County Court of McIntosh County, State of Oklahoma made and entered on the 29th day of February, A. D. 1916, the above named principals was appointed Co-Administrators of the Estate of Samuel Richard, deceased, and letters Testamentary were directed to issue to said principal upon their taking and subscribing the oath required by law, and executing a bond to the State of Oklahoma, in the penal sum of Two Hundred Twenty-five Thousand and no/100—— ($225,000.00) Dollars, with two or more sureties to be approved by the Judge of said Court.

Now, if the above bounden principals shall faithfully execute the duties of such trust as such Co-Administrators according to law, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, We have hereunto subscribed our names, this 29th day of February, A. D. 1916,

R. D. MARTIN,
EASTMAN RICHARD,
Southern Surety Company, (Seal)
By W. F. MOFFAT,
Attorney-in-fact.

I hereby approve the above bond this 29th day of Feb. 1916.
JOHN W. ROBERTSON, *County Judge.*

Endorsed on back as follows: "No. 247—Estate Samuel Richard, Decd. Filed Feb. 29, 1916, W. B. Young, Court Clerk. (Ex. "A")

LETTERS OF ADMINISTRATION.

State of Oklahoma, McIntosh County—ss. *In County Court, Sitting at Checotah, Okla. In the Matter of the Estate of Samuel Richard, Deceased.*

Eastman Richard and R. D. Martin, are hereby appointed administrators of the estate of Samuel Richard, Deceased.

Witness, John W. Robertson, Judge of the County Court of McIntosh County, State of Oklahoma, with the seal thereof affixed this 29th day of February, A. D. 1916.

(Seal) JOHN W. ROBERTSON, *County Judge.*

State of Oklahoma, McIntosh County.

I, Eastman Richard and R. D. Martin, do solemnly swear that I will discharge all and singular the duties of administrator of the estate of Samuel Richard, deceased, according to law, and to the best of my ability. So help me God.

EASTMAN RICHARD,

(Seal) R. D. MARTIN,

Subscribed and sworn to before me this 29th day of February, 1916. JOHN W. ROBERTSON, *County Judge.*

(Ex. "B")

Endorsed: No. 4971. In the District Court in Muskogee County. Eastman Richard and R. D. Martin, administrators of Estate of Samuel Richard, decd., Plaintiffs vs. Gabe E. Parker, Gabe E. Parker, Supt. for Five Civilized Tribes, W. M. Baker and W. M. Baker, Cashier for Five Civilized Tribes, Defts. First Amended Petition. District Court, State of Oklahoma, County of Muskogee, Filed Jul. 29, 1916, C. H. Shaffer, Court Clerk.

Endorsed: Filed Aug. 18, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 30th day of August, A. D. 1916, the defendants filed their Answer herein, which is in words and figures as follows:

In the District Court of the United States for the Eastern District of Oklahoma.—Eastman Richard and R. D. Martin, Co-Administrators of the Estate of Samuel Richard, Deceased, Plaintiffs, v. *Gabe E. Parker, Gabe E. Parker, Superintendent for the Five Civilized Tribes, W. M. Baker and W. M. Baker, Cashier for the Five Civilized Tribes, Defendants.*—No. 2322 Equity.

Answer.

The defendants and each of them, answering the first amended petition herein filed, allege:

I.

That the defendant, Gabe E. Parker, is an officer of the Interior Department of the United States and is designated as Superintendent for the Five Civilized Tribes and that as such officer he is charged and entrusted with the duty of generally supervising the affairs of all Indians and particularly the restricted Indians, so-called, of the Five Civilized Tribes, among whom is the Creek tribe of Indians.

That the defendant, W. M. Baker, is an officer of the United States and of the Interior Department thereof, designated as Cashier for the Five Civilized Tribes and his duties as such Cashier are to receive and disburse according to law all sums of money properly entering into his possession and control as portions of the funds of the Five Civilized Tribes and the individual members thereof.

II.

That as to whether Eastman Richard and R. D. Martin are the duly and legally appointed administrators of the estate of Samuel Richard, deceased, defendants are not advised; nor are defendants advised as to whether Samuel Richard is now deceased and of these facts defendants demand strict proof. But your defendants allege that Samuel Richard was enrolled as a member of the Creek Tribe of Indians of the full blood, opposite number 7668 upon the approved rolls of said tribe and that there was allotted to him as his share of the tribal lands the Southwest Quarter of Section Four (4), Township Seventeen (17) North, Range Seven (7) East of the Indian Base and Meridian, which said lands were on the 13th day of April, 1912, by virtue of certain congressional laws designed to protect the said Samuel Richard, incapable of alienation for a period of approximately nineteen years from said date unless the Secretary of the Interior should sooner cause the restrictions to be removed therefrom. That on said date the allottee thereof, Samuel Richard, was incapable of leasing the said lands for oil, gas or other mineral purposes save with the approval of the Secretary of the Interior and under such rules and regulations as the said Secretary of the Interior might provide, and that on to-wit, the said 13th day of April, 1912, the said Samuel Richard, who was then a minor under the age of twenty-one years, did execute by his guardian, Eastman Richard, a certain oil and gas mining lease upon the above described lands, which said lease was duly approved by the County Court having jurisdiction of the estate of the said minor, and which said leases was on a form prescribed by the rules and regulations of the Secretary of the Interior, and was duly approved by the Secretary of the In-[terior]. A copy of said lease showing the approval of the Secretary of the Interior is hereto attached, made a part hereof and marked "Exhibit A". Under the terms of said lease and pursuant to the operation thereof there has accrued in the hands of the defendants up to and including the date of the filing of this petition, the sum of $216,-152.15, which said sum of money has been received at various times and in varied amounts, a complete account of which would be inconvenient to detail in this petition. But your defendants

offer to produce to this court, or any person authorized thereby, all books and papers pertaining to the account of the said Samuel Richard, and stand ready to account at any and all times to this court or to any person properly designated by this court for all sums accrued or hereafter to accrue in their hands by virtue of mining operations under said leases.

III.

Your defendants further allege that the said Samuel Richard, if he be in fact dead, left as his sole and only heir at law one Eastman Richard, one of the plaintiffs in this cause, who is a full-blood Indian of the Creek Tribe and who by the death of the said Samuel Richard, if he be in fact dead, became and now is the sole owner of all the property, both real and personal, of which the said Samuel Richard died seized and possessed; and that said property descended to said Eastman Richard free and discharged of all debts accruing during the lifetime of the said Samuel Richard and said property is not subject to administration in any manner or form whatever. And defendants say that the proceeds of the said oil and gas mining leases are, by virtue of the rules and regulations of the Secretary of the Interior, pertaining to the funds so received and by virute of the laws of the United States of America provided for the protection of the said Samuel Richard and all his full-blood heirs, restricted trust funds subject to the control of the Secretary of the Interior as the officer of the United States charged with the duty of enforcing the protection of the United States as a sovereign over its wards, the dependent Indian Tribes and the individual members thereof and particularly over the said Samuel Richard and his full-blood alleged heir, Eastman Richard, one of the plaintiffs herein.

IV.

Your defendants allege that the said allotment of Samuel Richard hereinabove described has at all times since the death of the said Samuel Richard, if he be in fact dead, been the property of the said Eastman Richard and is still owned and controlled by him.

V.

Your defendants and each of them deny that said death of the said Samuel Richard, if said death has in fact occurred, on the 24th day of January, 1916, operated to remove all restrictions upon the alienation of the lands covered by the aforesaid lease and allege that said lands continue to be and are restricted and they further deny that they have no jurisdiction or lawful right to withhold possession of said sums of money so as afore-

said accruing from the operation of the said lease and deny that they now illegally hold the said sums of money; but say that they hold the same as a trust fund created under the laws of the United States and the rules and regulations of the Secretary of the Interior pertaining thereto, for the benefit of the said Samuel Richard and his full-blood heirs, and that they have the right to withhold and disburse said sums of money at such times and in such quantities as they shall deem proper to the said Samuel Richard, or, in the event of his death, to his full-blood heirs.

VI.

Defendants allege that they have no personal interest whatsoever in said sums of money and specifically disclaim as individuals any right, title or interest therein, but say that they and each of them do hold said sums by authority of the Acts of Congress by virtue of which said funds were created and the rules and regulations of the Secretary of the Interior provided pursuant thereto respecting leases of this kind and character; that they and each of them have been, are and at all times will be willing and ready to abide by the orders of this court or any other court of competent jurisdiction relative to the disposition of the money aforesaid, but respectfully allege that said sums of money so accruing in their hands are not subject to disposition and control save and except by order of the Secretary of the Interior or his duly authorized subordinates.

Wherefore, defendants pray that plaintiffs take nothing by this action but that they be hence dismissed with their costs and that they have all other and further relief to which they may be in the premises entitled.

GABE E. PARKER,
GABE E. PARKER, as
Superintendent for the Five
Civilized Tribes,

W. M. BAKER,
W. M. BAKER, as
Cashier for the Five Civilized
Tribes,

By D. H. LINEBAUGH,
United States District Attorney, and
W. P. MCGINNIS, and
PAUL PINSON,
Special Assistants to the
United States District Attorney, *Solicitors for Defendants.*

EXHIBIT A.

[Stamps and Endorsements:

Office of Indian Affairs Received Jul 7 1913—84133
Received Union Agency Jun 18 1912 Enclosure to Dept. No. 1963
Office of Indian Affairs Received Dec 27 1912—132434.
Office of Indian Affairs Received May 29 1912 File—— 53962
Received Union Agency Apr 26 1912 Enclosure to No 24865
Received Union Agency Dec 7 1912 Enclosure to Dept. No. 3701
Office Indian Affairs Received Nov 21 1912—117[illegible]0
Received Union Agency Jun 13 1913 Enclosure to Dept. No. 118.
Received Union Agency Jul 21 1913 Enclosure to Dept. No. 2472
Received Union Agency Mar 3 1913 Enclosure to Dept. No. 770
Office of Indian Affairs Received Feb 21 1913—23610
Roy. No. 6057.
Equitable Surety Co.
Apr 29 1917 Q.—H.H.
36057 1 Duplicate]

Form A, Series 1908.—Approved April 20, 1908.
Amended February 6, and June 29, 1911.

OIL AND GAS MINING LEASE UPON LAND SELECTED FOR ALLOTMENT

Creek Nation, Oklahoma.

This Indenture of Lease, Made and entered into in quadruplicate on this 13th day of April, A. D. 1912, by and between Eastman Richard, as the legal Guardian of the person and estate of Samuel Richard, a minor of Pierce, Oklahoma, enrolled as a full blood citizen of the Creek Nation, Roll No. 7668, party of the first part, hereinafter designated as lessor, and The Kathleen Oil Company, a Corporation, of Tulsa, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908 (35 Stat. L., p. 312), *Witnesseth:*

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations, and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the les-

see, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Creek and State of Oklahoma, to-wit: *The* The Southwest Quarter (¼) of section 4, township 17 North, range 7 East of the Indian Meridian, and containing 160 acres, more or less, with the exclusive right to prospect for, extract, pipe, store, and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance to be calculated from the date of commencement of utilization: *Provided*, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty which will become effective as a part of this lease: *Provided*, further, That in cases of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such an extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which can not profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to

mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the Superintendent, Union Agency, Muskogee, Oklahoma, for lessor, as advance annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance, for the first and second years; thirty cents per acre per annum, annually in advance, for the third and fourth years; seventy-five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the elec-

tion and covenant of the lessee to pay the rental of one dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligation to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose, to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells, lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lease, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before

abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property, and upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Indian Superintendent all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder: *Provided*, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: *Provided, further*, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof, by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: *Provided, however*, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or

bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian Superintendent shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the Eufaula National Bank, of Eufaula, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

EASTMAN RICHARD, (Seal)
As Guardian of the person and estate of Samuel Richard, a minor.
THE KATHLEEN OIL COMPANY,
By P. J. WHITE, *President.*

Attest: (Seal) H. F. SINCLAIR, *Secy.*

Two witnesses to execution by lessor:
C. L. Thomas, P. O. Muskogee, Okla.;
Britton H. Tabor, P. O. Checotah, Okla.

Two witnesses to execution by lessee:
E. B. Huston, P. O., Independence, Kansas;
Paul Konz, P. O., Independence, Kansas.

State of Oklahoma, County of Muskogee—ss.

. . . . . before me, Minnie M. Ford, a Notary Public, in and for said county and State, on this 13th day of April, 1912, personally appeared Eastman Richard, as Guardian of the person and estate of Samuel Richard, a minor, to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth, and in the capacity therein stated.

(Seal) Minnie M. Ford,
(My commission expires February 26, 1916.) Notary Public.

Department of the Interior,
United States Indian Service, Union Agency,
Muskogee, Okla., May 23, 1912.

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. See my report of even date.

R. S. CATE,
Acting United States Indian Superintendent.

Department of the Interior,
Office of Indian Affairs,
Washington, D. C., Jun 5 1912

Respectfully submitted to the Secretary of the Interior, with recommendation that it be approved.

F. H. ABBOTT, *Assistant Commissioner.*

Department of the Interior,
Washington, D. C., Jun 8 1912

Approved CAMIE A. THOMPSON,
Assistant Secretary of the Interior.—H.

Filed for record this 26 day of Apr., 1912, at 3 o'clock, P. M. Dana H. Kelsey, Superintendent Union Agency, by R. W. Field. Advance Royalty Received $24.00.

Duplicate. Roy. No. 6057.

[Stamps and Endorsements:

Received Union Agency Jul 20 1912 Enclosure to No. 42387

Office of Indian Affairs Received Nov 21 1912 117220 Ent Creek Roy. No. 7017]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912,

entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

SE¼ of SW¼ of Section 4, Twp 17 North, Range 7 East (and other lands)

Now, Therefore, for and in consideration of One ($1.00) dollars, the receipt of which is hereby acknowledged, the said The Kathleen Oil Company, the lessee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all its right, title, and interest of the lessee in and to said SE¼ of SW¼ of Section 4, Twp 17 North, Range 7 East lease, subject to the approval of the Secretary of the Interior to Kemp & Hayden, co-partners composed of E. R. Kemp and John F. Hayden of Tulsa, Oklahoma.

In witness whereof, the said lessee has hereunto set its hand and seal, this 2nd day of July, 1912.

THE KATHLEEN OIL COMPANY,

(Seal) By P. J. WHITE, *President.*

Attest: H. F. SINCLAIR, *Secretary.*

ACKNOWLEDGEMENT OF CORPORATION.

State of Oklahoma, Tulsa County—ss.

Before me, a notary public in and for said county and State, on this 2nd day of July, 1912, personally appeared P. J. White, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

(Seal) Arthur Newlin,

(My commission expires Oct 3-1914.)

[Endorsement stamp: Received Union Agency Dec 7 1912 Enclosure to Dept. No. 3701]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of , *County of* —ss.

Before me, ... in and for said county and State, on this . . . . day of . . . . . , personally appeared . . . . . to me known to be the identical person . . who executed the within and foregoing instrument, and acknowledged to me that . . . . executed the same as . . . . free and voluntary act and deed for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . .)

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set their hand and seal this 27th day of July, 1912.

Kemp & Hayden
By E. R. KEMP
JNO. F. HAYDEN

CONSENT OF SURETY.

The Equitable Surety Company of St. Louis, Mo., surety for The Kathleen Oil Company on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

Dated at Muskogee Oklahoma this .... day of July, 1912.

. . . . . .
. . . . . .
. . . . . .

Department of the Interior,
Washington, D. C., Nov. 29, 1912.
Approved: Subject to the conditions attached to the lease.
LEWIS C. LAYLIN, *Assistant Secretary.*—H.

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and Endorsements:

Office of Indian Affairs Received Feb 21 1913. 23610.
Received Union Agency Jan 20, 1913. Enclosure No. 3872.
Creek 6057
Ent.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13, 1912, en-

tered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, Guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

SW/4 of SW/- of Section 4, Township 17, North, Range 7 East; said lease having been assigned to the Tartar Oil Company by due and proper departmental assignment.

Now, Therefore, for and in consideration of One Dollar ($1.00) *dollars*, the receipt of which is hereby acknowledged, the said Tartar Oil Company, the assignee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all of its right, title and interest of the assignee in and to said lease, subject to the approval of the Secretary of the Interior to The Kathleen Oil Company of Tulsa, Oklahoma.

In witness whereof, the said assignee has hereunto set its hand and seal, this Fifteenth day of January, 1913.

TARTAR OIL COMPANY,

(Seal) By HENRY LESCHEN, *President.*

Attest: W. E. WEISBERG, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

State of Missouri, City of St. Louis—ss.

Before me, a Notary Public in and for said City and State, on this fifteenth day of January, 1913, personally appeared Henry Leschen to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and acknowledged to me that he executed the same as his free voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

(Seal) Anna A. Fash,

(My commission expires Sept. 27, 1913.) Notary Public.

Endorsement Stamp: Received Union Agency Mar. 3 1913 Enclosure to Dept. No. 770.

ACKNOWLEDGMENT OF INDIVIDUAL.

State of . . . . . ., *County of* . . . . . .—ss.

Before me, ..., in and for said county and State, on this . . . . . day of . . . . . personally appeared . . . . . to me known to be the identical person. . who executed the within and foregoing instrument, and acknowledged to me that . . . . . executed the same as . . . . . free and voluntary act and deed for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . . .)

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 17th day of January, 1913.

THE KATHLEEN OIL COMPANY,

(Seal) By P. J. WHITE, *President.*

Attest: H. F. SINCLAIR, *Secretary.*

CONSENT OF SURETY.

The ....., surety for ..... on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made .....

Dated at ..... this ..... day of ....., 191 ..

.....

.....

.....

Department of the Interior,
Washington, D. C., Feb 24 1913.

Approved: Subject to the conditions attached to the lease.

LEWIS C. LAYLIN,
Assistant Secretary.—H.

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the Original Copy of the assignment.

[Stamps and Endorsements:

Received Union Agency May 10 1913 Enclosure No. 26800
Office of Indian Affairs Received Jul 7 1913 84133
Ent 37017]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee,

and Eastman Richard, guardian of Samuel Richard, a minor, lessor, which lease has been assigned to Kemp & Hayden, co-partners composed of E. R. Kemp and John F. Hayden covering the following-described lands in the Creek Nation, Oklahoma:

The Southeast quarter (¼) of the Southwest quarter (¼) of Section 4, Township 17 North, Range 7 East (and other lands)

Now, therefore, for and in consideration of One and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Kemp & Hayden, assignees, in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the right, title, and interest of the assignees in and to said lease as to the SE¼ of SW¼ of Section 4, Township 17 North, Range 7 East subject to the approval of the Secretary of the Interior to Gypsy Oil Company, a corporation of Tulsa, Oklahoma.

In witness whereof, the said assignees have hereunto set their hands and seals this Seventh day of May, 1913.

Kemp & Hayden,
By E. R. KEMP,
JNO. F. HAYDEN.

ACKNOWLEDGMENT OF CORPORATION.

State of . . . . . ., ... *County*—ss.

Before me, a . . . . . in and for said county and State, on this . . . . day of . . . . . ., 191 . ., personally appeared . . . . . to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its . . . . . and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . . ., 191 . .)

[Endorsement Stamp: Received Union Agency Jul 21 1913 Enclosure to Dept. No. 2472]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of Oklahoma, County of Tulsa—ss.

Before me, F. C. Hays, a Notary Public in and for said county and State, on this Seventh day of May, 1913, personally appeared E. R. Kemp and John F. Hayden to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the

same as their free and voluntary act and deed for the uses and purposes therein set forth.

(Seal) F. C. Hays,

(My commission expires November 19th, 1915.) Notary Public.

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 7th day of May, 1913.

Gypsy Oil Company,

(Seal) M. M. Doan, *General Agent.*

Attest: [Illegible], *Assistant Secretary.*

CONSENT OF SURETY.

The . . . . . of . . . . . ., surety for . . . . . on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made . . . . . .

Dated at . . . . . this . . . . . day of . . . . ., 191 .

. . . . . .

. . . . . .

. . . . . .

Department of the Interior,

Washington, D. C., Jul 14 1913

Approved: Subject to the conditions attached to the lease.

A. A. Jones, *First Assistant Secretary. WCI*

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the Original Copy of the assignment.

[Stamps and Endorsements:

Received Union Agency May 16 1913 Enclosure No 27824
Office of Indian Affairs Received Jul 7 1913 84133
Ent]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore

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approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, which lease has been assigned to Kemp & Hayden, co-partners composed of E. R. Kemp and John F. Hayden covering the following-described lands in the Creek Nation, Oklahoma:

The Southeast quarter (¼) of the Southwest quarter (¼) of Section 4, Township 17 North, Range 7 East (and other lands)

Now, therefore, for and in consideration of One and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Kemp & Hayden, the assignees, in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the right, title, and interest of the assignees in and to said lease as to the SE¼ of SW¼ of Section 4, Township 17 N. Range 7 E subject to the approval of the Secretary of the Interior to Toxaway Oil Company, a corporation of Tulsa, Oklahoma.

In witness whereof, the said assignees have hereunto set their hands and seals this 15th day of May, 1913.

Kemp & Hayden,
By E. R. KEMP,
JNO. F. HAYDEN,

ACKNOWLEDGMENT OF CORPORATION.

State of . . . . . , ... *County*—ss.

Before me, a . . . . . in and for said county and State, on this . . . . day of . . . . . , 191 . . , personally appeared . . . . . to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its . . . . . and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth. . . . . .

(My commission expires . . . . . , 191 . .)

[Endorsement stamp: Received Union Agency Jul 21 1913 Enclosure to Dept. No. 2472]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of Oklahoma, County of Tulsa—ss.

Before me, F. C. Hays, a Notary Public in and for said county and State, on this 15th day of May-1913, personally appeared E. R. Kemp and John F. Hayden to me known to be

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the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

F. C. Hays,
Notary Public.

(Seal)

(My commission expires November 19th, 1915.)

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 15th day of May, 1913.

TOXAWAY OIL COMPANY,
By E. R. KEMP, *President.*

(Seal)

Attest: R. S. SHERMAN, *Secretary.*

CONSENT OF SURETY.

The . . . . . of . . . . . , surety for . . . . . on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

Dated at . . . . . this . . . . . day of . . . . . , 19. .

. . . . . .
. . . . . .
. . . . . .

Department of the Interior,
Washington, D. C., Jul 14 1913.

Approved: Subject to the conditions attached to the lease.
A. A. JONES, *First Assistant Secretary.* WCP

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the Original Copy of the assignment.

[Stamps and Endorsements:
Ent. 3707
Received Union Agency Mar 13 1914 Enclosure No. 16210
Office of Indian Affairs Received Apr 18 1914 42255]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor covering the following-described lands in the Creek Nation, Oklahoma:

The Southeast quarter (¼) of the Southwest quarter (¼) of Section 4, Township 17 North, Range 7 East (and other lands)

Now, therefore, for and in consideration of one and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Toxaway Oil Company, a corporation, the assignee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the undivided one-half interest in the right, title, and interest of the assignee in and to said lease, as the same applies to the SE¼ of SW¼ of Sec. 4, Twp 17 N. Range [7 E.], subject to the approval of the Secretary of the Interior to Sperry Oil & Gas Company, a corporation, of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set its hand and seal, this Seventh day of March, 1914.

TOXAWAY OIL COMPANY,

(Seal) By E. R. KEMP, *Pres.*

Attest: MARY M. HOKE, *Sec'y.*

ACKNOWLEDGMENT OF CORPORATION.

State of Oklahoma, Tulsa County—ss.

Before me, a Notary Public in and for said county and State, on this 7th day of March, 1914, personally appeared E. R. Kemp to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

(Seal) John Schmitz.

(My commission expires—My Commission expires Jan. 26, 1916.)

[Endorsement stamp: Received May 12 1914 Union Agency. Dept, No. 2120.]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of . . . . . ., County of . . . . . —ss.

Before me, ... in and for said county and State, on this . . . . day of . . . . . ., personally appeared . . . . . to me known to be the identical person . . who executed the within and foregoing instrument, and acknowledged to me that . . . . . executed the same as . . . . . free and voluntary act and deed for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . . .)

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 11th day of March, 1914.

SPERRY OIL AND GAS CO.,

(Seal) By C. F. BISETT, *Vice Pres.*

Attest: GEO. E. WISK, *Secty.*

CONSENT OF SURETY.

The . . . . . of . . . . . .; surety for . . . . . on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made . . . . .

Dated at . . . . . this . . . . day of . . . . ., 191 . . .

. . . . . .

. . . . . .

. . . . . .

Department of the Interior,

Washington, D. C., May 4, 1914.

Approved: Subject to the conditions attached to the lease.

LEWIS C. LAYLIN, *Assistant Secretary.*

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the Original Copy of the assignment.

[Stamps and Endorsements:
Received Sept. 5 Civic Tribes Feb 24 1916 Enclosure to No. 18810
Office of Indian Affairs Received May 13 1916—52026.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, a corporation, of Tulsa, Oklahoma, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma.

N½ of NW¼ and SW¼ of SW¼ of Sec. 4, Twp 17 North, Range 7 East.

Now therefore, for and in consideration of One ($1.00) dollars, the receipt of which is hereby acknowledged, the said The Kathleen Oil Company, the lessee in the above-described lease, hereby bargains, sells, transfers, assigns and conveys all the right, title, and interest of the lessee in and to said lease, subject to the approval of the Secretary of the Interior to Okla Oil Company a corporation, of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set . . . . . hand and seal, this 12th day of February, 1916.

THE KATHLEEN OIL COMPANY,
(Seal) By H. F. SINCLAIR, *President.*
Attest: E. W. SINCLAIR, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

State of Oklahoma, Tulsa County—ss.

Before me, Notary Public in and for said county and State, on the 12th day of February, 1916, personally appeared H. F. Sinclair to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

(Seal) Paul Konz,
(My commission expires January 21, 1917.) Notary Public.

Duplicate. U. S. Fid. & Guar. Co.

[Endorsement Stamp: Received Supt. 5 Civ Tribes May 27 1916 Enclosure to Dept. No. 3449]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of . . . . . , *County of* . . . . . .—ss.

Before me, ... in and for said county and State, on this . . . . . day of . . . . . ., personally appeared . . . . . to me known to be the identical person . . who executed the within and foregoing instrument, and acknowledged to me that . . . . . executed the same as . . . . . free and voluntary act and deed for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . .).

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 21st day of February, 1916.

OKLA OIL COMPANY,
By FRANK HASKELL, *Vice-President.*

Attest: (Seal) C. E. HANE, *Secretary.*

CONSENT OF SURETY.

The . . . . . of . . . . . ; surety for . . . . . on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made . . . . . .

Dated at . . . . . ., this . . . . day of . . . . . , 191 . .

. . . . . .
. . . . . .
. . . . . .

Department of the Interior,
Washington, D. C., May 22 1916

Approved: Subject to the conditions attached to the lease.

BO SWEENEY,
Assistant Secretary.

Note: If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in

the consent of the surety company. The consent of the surety company need only be executed on the ORIGINAL COPY of the assignment.

Duplicate.

Lease No. 22731

Department of the Interior,
Washington, D. C. Jul 14 1913

The assignment of this lease insofar as pertains to an undivided one half interest in the SE4 of the SW4 of Sec. 4 T. 17 N. R. 7 by Kemp & Hayden to the Gypsy Oil Co.,

is APPROVED, with the understanding and provision that no rights, claims, or equities, as against future action by or under authority of Congress respecting oil or gas pipe line companies, shall be predicated upon this approval and subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES,
First Assistant Secretary. WCP

[Endorsement stamp: Received Sup 5 Civ Tribes May 27 1916 Enclosure to Dept No. 3449]

Department of the Interior,
Washington, D. C., May 22 1916

The assignment of this lease by the Kathleen Oil Company to the Okla Oil Company insofar as pertains to the N2 SW4 and SW4 SW4, Sec. 4, T. 17, R. 7, is APPROVED, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

Bo SWEENEY,
Assistant Secretary.

U. S. Fid. & Guar. Co.

[Endorsement stamps:

Office of Indian Affairs Received May 13 1916 52026
Received May 12 1914 Union Agency Dept. No. 2120]

Lease No. 22731

Department of the Interior,
Washington, D. C., May 4 1914

The assignment of an undivided one-fourth interest in this lease by Toxaway Oil Co., assignee of Kemp & Hayden, assignees of The Kathleen Oil Co., lessee, to Sperry Oil & Gas Co., as to SE4 of SW4 of 4–17–7, containing 40 acres, is APPROVED, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN, *Assistant Secretary.*

[Endorsement stamps:

Office of Indian Affairs Received Apr. 18 1914 42255
Received May 12 1914 Union Agency Dept. No. 2120]

Lease No. 22731

Department of the Interior,
Washington, D. C., Jul 14 1913

The assignment of this lease insofar as pertains to an undivided one half interest in the S.E.¼ of SW4 of Sec. 4 T. 17 N. R. 7 E. by Kemp & Hayden to the Toxaway Oil Co. is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES, *First Assistant Secretary.* WCP

Lease No. 22731

Department of the Interior,
Washington, D. C., Feb 24 1913

This assignment of this lease by the Tartar Oil Co. to The Kathleen Oil Co. insofar as pertains to the SW4 of the SW4 of Sec. 4 T. 17 N R 7 E is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamp: Office of Indian Affairs Received Feb. 21 1913 23610]

118 Lease No. 22731

Department of the Interior,
Washington, D. C., Jan. 4, 1913.

The assignment of this lease by The Kathleen Oil Company to the Tartar Oil Company, as to the SW4 of the SW4 of Sec. 4, T. 17 N. R. 7 E., containing 40 acres, is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamps:

Office of Indian Affairs Received Dec 27 1912 132434
Office of Indian Affairs Received Feb 21 1913 23610]

Lease No. 22731

Department of the Interior,
Washington, D. C. Nov 29 1912

The assignment of this lease insofar as pertains to SE4 of SW4 of Sec. 4 Twp 17 N R 7 East by The Kathleen Oil Co. to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

Endorsed: Filed Aug. 30, 1916, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

And, to-wit, on the 21st day of September, A. D. 1916, Plaintiffs and Defendants, by their Solicitors of Record, filed Stipulation as to Record and Evidence on Appeal, which was approved by the Court, said Stipulation and Approval of the Court being in words and figures as follows:

Lease No. 22731

Department of the Interior,
Washington, D. C., May 4 1914

The assignment of an undivided one-fourth interest in this lease by Toxaway Oil Co., assignee of Kemp & Hayden, assignees of The Kathleen Oil Co., lessee, to Sperry Oil & Gas Co., as to SE4 of SW4 of 4–17–7, containing 40 acres, is APPROVED, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN, *Assistant Secretary.*

[Endorsement stamps:

Office of Indian Affairs Received Apr. 18 1914 42255
Received May 12 1914 Union Agency Dept. No. 2120]

Lease No. 22731

Department of the Interior,
Washington, D. C., Jul 14 1913

The assignment of this lease insofar as pertains to an undivided one half interest in the S.E.¼ of SW4 of Sec. 4 T. 17 N. R. 7 E. by Kemp & Hayden to the Toxaway Oil Co. is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES, *First Assistant Secretary.* WCP

Lease No. 22731

Department of the Interior,
Washington, D. C., Feb 24 1913

This assignment of this lease by the Tartar Oil Co. to The Kathleen Oil Co. insofar as pertains to the SW4 of the SW4 of Sec. 4 T. 17 N R 7 E is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamp: Office of Indian Affairs Received Feb. 21 1913 23610]

118 Lease No. 22731

Department of the Interior,
Washington, D. C., Jan. 4, 1913.

The assignment of this lease by The Kathleen Oil Company to the Tartar Oil Company, as to the SW4 of the SW4 of Sec. 4, T. 17 N. R. 7 E., containing 40 acres, is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamps:

Office of Indian Affairs Received Dec 27 1912 132434
Office of Indian Affairs Received Feb 21 1913 23610]

Lease No. 22731

Department of the Interior,
Washington, D. C. Nov 29 1912

The assignment of this lease insofar as pertains to SE4 of SW4 of Sec. 4 Twp 17 N R 7 East by The Kathleen Oil Co. to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

Endorsed: Filed Aug. 30, 1916, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

And, to-wit, on the 21st day of September, A. D. 1916, Plaintiffs and Defendants, by their Solicitors of Record, filed Stipulation as to Record and Evidence on Appeal, which was approved by the Court, said Stipulation and Approval of the Court being in words and figures as follows:

Stipulation as to Record and Evidence on Appeal.

On this the 21st day of September, 1916, there having been duly filed in this cause petition for order allowing appeal and an order allowing appeal having been duly entered by the court, cost bond having been filed and approved and assignment of errors duly filed and notice of appeal having been heretofore duly given in open court, the plaintiffs, by their attorneys, and the defendants, by their attorneys, now, in open court, stipulate and agree and file this stipulation and agreement subject to the approval of the court.

It is agreed that, for the purposes of appeal, the record in this cause shall consist of the amended petition of plaintiffs, the answer of defendants, the decree and opinion of the court, and this stipulation, together with petition for appeal, order allowing appeal and assignment of errors, and that plaintiffs may file praecipe for printing of record, in accordance with this agreement, without further notice.

It is agreed that the undisputed evidence in this case disclosed that Samuel Richard was, during his lifetime, a full-blood member of the Creek Tribe of Indians, who received an allotment of land properly described in plaintiffs' petition; that an oil and gas lease was duly and properly executed thereon by the guardian of the said Samuel Richard, who was a minor, and that said oil and gas lease was duly approved by the Probate Court, as required by the laws of the State of Oklahoma, and was, in the month of June, 1912, approved by the Secretary of the Interior, as required by the laws of the United States; that operations under said lease began and the royalties and rents accruing under the said lease were paid to the defendants, who received the same and have, at all times since, held the same, keeping an account of the receipts under such lease, showing the amounts of money received and credited to the account of Samuel Richard, which money was received by them pursuant to the terms of said lease and which money they claimed to be entitled to hold only by reason of their official character. That defendants make no claim of any personal interest in said sum.

That, on the 24th day of January, 1916, the said Samuel Richard died, and that he left surviving him, as his nearest relatives and members of his immediate family, the following persons:

Eastman Richard, his father,
Jeannetta Richard, his sister, and
Rina Richard, his sister,

all of whom are duly enrolled full-blood members of the Creek

Tribe of Indians, and to one or all of whom, as an inheritance from the said Samuel Richard, the said land now belongs.

That Eastman Richard and R. D. Martin are the duly appointed, qualified and acting administrators of the estate of the said Samuel Richard, deceased.

It is further agreed that, at the date of the trial, the defendants had in their possession the sum of $216,154.16, a portion of which money was paid to the defendants as royalties prior to the death of the said Samuel Richard, and the remaining portion as royalties subsequent to the death of the said Samuel Richard.

LUCAS and TABOR,
Attorneys for Plaintiffs.

D. H. LINEBAUGH,
United States Attorney,

PAUL PINSON,
Special Assistant to United States Attorney,
Attorneys for Defendants.

The above stipulation as to the matters to be contained in the record for appeal in this cause and as to the evidence in this cause for the purpose of appeal, is hereby approved this the 21st day of September, 1916.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Sep. 21, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 28th day of February, A. D. 1918, the same being one of the days of the regular January 1918 term of the United States District Court for the Eastern District of Oklahoma, Court met pursuant to adjournment at Muskogee, Oklahoma. Present and presiding the Honorable RALPH E. CAMPBELL, Judge.

Among the proceedings had on this day is the following:

Decree.

On this 28th day of February, 1918, this cause came on for trial by agreement of the parties and on such date the court heard all the evidence in this cause and the argument of counsel and thereupon, upon consideration of such evidence and argument, the court being well and sufficiently advised in the premises; and in compliance with directions contained in the mandate issued by the Circuit Court of Appeals on November 5, 1917, and filed in this court on November 7, 1917,

directing this court to enter a decree for plaintiffs in accordance therewith:

It is ordered, adjudged and decreed by the court as follows: That the defendants Gabe E. Parker as Superintendent for the Five Civilized Tribes and W. M. Baker as Cashier for the Five Civilized Tribes, account for and pay to the plaintiffs herein the sum of One Hundred Nineteen Thousand, Six Hundred Twenty-one Dollars and Thirty-two Cents ($119,621.32).

It is further ordered, adjudged and decreed by the court that the said defendants as such aforesaid officials, and their successors in office, properly endorse, surrender and deliver to plaintiffs United States Liberty Bonds in the sum of One Hundred and Sixty-two Thousand Dollars ($162,000.00) as well as any and all notes and mortgages, certificates of deposit, drafts and bonds or other evidence of indebtedness they have in their possession or control, representing royalty moneys received or collected from the Samuel Richard allotment of land hereinafter described.

It is further ordered, adjudged and decreed by the court that the defendants as such aforesaid officials, and each of them, and their successors in office, be, and they are hereby, perpetually enjoined, restrained and forbidden from receiving, collecting or interfering in the collection of any and all moneys accruing as rentals and from the proceeds of sale of royalty oil produced from the Samuel Richard allotment of land located in Creek County, State of Oklahoma, described as follows, to-wit:

> Southwest quarter, Section four (4), Township 17 North, Range Seven (7) East, of the Indian Base and Meridian according to the United States Survey thereof, containing 160 acres of land, more or less,

and the said defendants are further perpetually enjoined, restrained and forbidden from hereafter interfering with the management, control or supervision over said lands and of the rentals and royalties, if any, that have accrued therefrom or may hereafter accrue therefrom or any part thereof.

It is further by the court ordered, adjudged and decreed that the defendants Gabe E. Parker and W. M. Baker personally neither have nor claim any right, title or interest in the said funds, nor in the control or possession thereof, and that the said defendants in their personal capacity go hence without day, with their costs herein laid out and expended.

To all and every portion of which the defendants Gabe E. Parker as Superintendent for the Five Civilized Tribes and

W. M. Baker as Cashier for the Five Civilized Tribes, then and there excepted, and saved their exceptions; and thereupon, in open court, they, and each of them, gave notice of appeal to the Circuit Court of Appeals of the United States for the Eighth Judicial Circuit.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Feb. 28, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 1st day of March, A. D. 1918, the Defendants filed their Petition for Allowance of Appeal together with their Assignment of Errors, which appeal was by the Court allowed. Said Petition for Allowance of Appeal, Assignment of Errors and Order Allowing Appeal are in words and figures as follows:

Petition for Allowance of Appeal.

To the Honorable Ralph E. Campbell, Judge of the District Court:

The above named defendants, Gabe E. Parker as Superintendent for the Five Civilized Tribes and W. M. Baker as Cashier for the Five Civilized Tribes, conceiving themselves aggrieved by the order and decree made and entered in the above styled and numbered cause on the 28th day of February, 1918, wherein and whereby it was ordered by the court that the said defendants in their said official capacity pay over to the said plaintiffs all sums of money on that date held by them in their said official capacity accruing from and arising out of the production of oil upon the allotment of Samuel Richard, deceased, and to deliver to the said plaintiffs all other properties, notes, bonds and evidences of indebtedness then in their hands, said sums of money and said bonds being as follows, to-wit: The sum of $119,621.32 in cash, and the sum of $162,000.00 represented by a fully paid subscription for Liberty loan bonds of the second issue of 1917, do hereby appeal from the said order and decree of the said court so made on the 28th day of February, 1918, the said appeal having been duly authorized and directed by the Honorable Thomas W. Gregory, Attorney General of the United States, the head of the Department of Justice of the United States, and the Honorable Franklin K. Lane, Secretary of the Interior of the United States, and the head of the Interior Department of the government, to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons and upon the grounds specified in the assignments of error of the defendants filed herewith;

and said defendants pray that their said appeal be allowed and that the transcript of the records, papers and proceedings in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

W. P. McGINNIS,
United States Attorney,

PAUL PINSON,
Special Assistant to the United States Attorney,
Solicitors for Defendants.

Endorsed: Filed Mar. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Assignments of Error.

Come now the defendants in the above entitled and numbered action, and file the following, their assignments of error, upon which they, and each of them, will rely in their prosecution of an appeal from the decree entered by this honorable court on the 28th day of February, 1918, in favor of the plaintiffs herein, and against the defendants herein, in their official and representative capacity.

I.

The court erred in rendering judgment in favor of the plaintiffs and against the defendants herein.

II.

The court erred in failing and refusing to postpone the rendition of decree in this matter as final until the ultimate determination of the identical question upon appeal now pending in the Supreme Court of the United States heretofore perfected and filed in this cause.

III.

The court erred in rendering final judgment upon the 28th day of February, 1918, at a time when all matters and things in controversy herein were pending before the Supreme Court of the United States in an appeal heretofore perfected and filed from the United States Circuit Court of Appeals for the Eighth Circuit in the Supreme Court of the United States.

IV.

The court erred in entering the final decree and in refusing to postpone the operation of the decree until such time as the Supreme Court of the United States might hereafter render its decision and opinion in the case of Gabe E. Parker,

Superintendent for the Five Civilized Tribes, et al. versus Eastman Richard et al., being the identical cause now pending before this court, and now pending on appeal in the said Supreme Court of the United States as hereinbefore set out.

V.

That the said trial court erred as a matter of law in holding in effect that the moneys accruing from the allotment of Samuel Richard, a deceased full-blood Indian, and becoming by inheritance the property of Eastman Richard, a full-blood restricted Indian of the Creek Nation, could not properly be with-held and retained by the Superintendent for the Five Civilized Tribes under authority and direction of the Secretary of the Interior of the United States, for the benefit and protection of the said Eastman Richard as such restricted full-blood Creek Indian.

VI.

The court erred in restraining and enjoining the defendants herein, Gabe E. Parker as Superintendent for the Five Civilized Tribes, and W. M. Baker as Cashier for the Five Civilized Tribes, from collecting or in any manner interfering with the collection of the royalties, rentals and profits accruing from and by virtue of the operation of an oil and gas mining lease upon the allotment of the said Samuel Richard, deceased, which said allotment was inherited by and is still the property of Eastman Richard, a full-blood heir of the said Samuel Richard, deceased, and which said oil and gas mining lease was, as required by law, approved by the Secretary of the Interior, and which said oil and gas mining lease, together with the rules and regulations prescribed by the Secretary, according to law, provided that said money should be paid to the said Superintendent and Cashier of the Five Civilized Tribes, and by them held for the benefit and protection of the said Eastman Richard, and with-held from him and disbursed at the discretion of the said officials of the said Interior Department of the United States.

VII.

The trial court erred in holding that the allotment of Samuel Richard, who died in the year 1916 leaving as his sole heir Eastman Richard, a full-blood Creek Indian, was, after the death of the said Samuel Richard, unrestricted land, and that the Secretary of the Interior has no right to supervise either the funds heretofore accrued from the said restricted allotment, whether before or after the death of the said Samuel Richard, or the funds hereafter to accrue from the said allot-

ment as royalties under the oil and gas mining lease hereinbefore referred to.

Wherefore defendants pray that the judgment of this court be reversed, and that judgment be rendered in this cause in accordance with the law and the facts, dismissing the bill of plaintiffs herein.

W. P. McGinnis,
United States Attorney,

By Paul Pinson,
Special Assistant to the United States Attorney,

Solicitors for Defendants.

Endorsed: Filed Mar. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Order Allowing Appeal.

Upon motion of W. P. McGinnis, United States Attorney for the Eastern District of Oklahoma, and Paul Pinson, Special Assistant to the United States Attorney, solicitors for defendants herein, and their petition for order allowing appeal based upon the various assignments of error filed in this cause;

It is ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit be, and the same is hereby, allowed from the final decree heretofore rendered and filed in this cause on the 28th day of February, 1918; and it is further ordered that a certified transcript of the records, papers and proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals for the Eighth Circuit at Saint Louis, Missouri.

And it appearing to the court that the appeal herein is being prosecuted by direction of certain heads of the Departments of the government, to-wit: at the direction and authority of the Honorable Thomas W. Gregory, Attorney General of the United States, and the Honorable Franklin K. Lane, Secretary of the Interior of the United States, and that the defendants herein are in no wise personally interested in the outcome of this litigation, but are acting solely upon such orders, direction and authority, it is by the court ordered that said appeal be without bond, and that the judgment hereinbefore rendered be superseded and execution thereon stayed during the pendency of the appeal herein.

Ralph E. Campbell, *Judge.*

Endorsed: Filed Mar. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 1st day of March, A. D. 1918, the Defendants filed Notice and Election as to Printed Transcript, and acknowledgment of service thereof, which are in words and figures as follows:

Notice and Election as to Printing Transcript.

To the Honorable R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma.

You are hereby notified that Gabe E. Parker as Superintendent for the Five Civilized Tribes, and W. M. Baker as Cashier for the Five Civilized Tribes, having appealed from the decree of this court entered herein against them in the above entitled cause on, to-wit: the 28th day of February, 1918, now elect to have the transcript of the record in said cause printed under your official supervision under the Act of Congress of February 13, 1911, and respectfully request that the transcript in said cause be printed as required by law under your direction in accordance with this election; and you are requested to make a transcript in the above entitled cause to be printed and filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to the appeal allowed in said cause, said transcript to be printed at the expense of the United States of America under its contract heretofore entered into with the co-partnership doing business under the firm name of Guyette & Humphry at Muskogee, Oklahoma; and you are requested to include in said transcript of record the following and no other papers or exhibits:

1. Amended Petition.
2. Answer of Defendants.
3. Decree rendered February 28, 1918.
4. Stipulation of counsel as to pleading and evidence material for appeal, as approved by the court herein on, to-wit: the 21st day of September, 1916.
5. Petition for order allowing appeal.
6. Assignment of Errors.
7. Order allowing appeal.
8. This praecipe and acceptance, and agreement attached hereto.
9. Clerk's certificate.

W. P. McGINNIS,
United States Attorney,

PAUL PINSON,
Special Assistant to the United States Attorney,
Solicitors for Defendants.

The undersigned solicitors for plaintiffs herein hereby acknowledge receipt of the above and foregoing designation of parts of the record necessary for the consideration of the errors assigned by the appellants, and waive the designation of any further part or parts of the records, thereby agreeing that the above includes all the parts of said record necessary for the consideration of the errors assigned by the appellants save and except that it is hereby stipulated between the said attorneys for the defendants and the attorneys for the plaintiffs herein that the evidence in this cause as adduced before the trial court showed that the amount of money in the hands of the defendants in this action on the 28th day of February, 1918, was as set out in the judgment herein, to-wit: $119,621.32 in cash and $162,000.00 in Liberty Loan Bonds of the United States.

It is further agreed on the part of the plaintiffs by their counsel that the record in this cause on appeal shall be printed under the supervision of the Clerk of the United States District Court for the Eastern District of Oklahoma.

Dated this 1st day of March, 1918.

J. B. LUCAS, and
BRITTON N. TABOR,
Solicitors for plaintiffs.

W. P. MCGINNIS,
United States Attorney,
PAUL PINSON,
Special Assistant United States Attorney,
Solicitors for defendants.

Endorsed: Filed Mar. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Certificate of Clerk.

United States of America, Eastern District of Oklahoma—ss.

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of *Eastman Richard and R. D. Martin, co-administrators of the Estate of Samuel Richard, Deceased*, v. *Gabe E. Parker and W. M. Baker, and Gabe E. Parker as Superintendent for the Five Civilized Tribes, and W. M. Baker, as Cashier for the Five Civilized Tribes*, No. 2322 Equity, as was ordered by praecipe of counsel

herein to be prepared and authenticated, as the same appears from the records in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court at my office, in the City of Muskogee, this 23rd day of March, 1918.

R. P. HARRISON, *Clerk;*

(Seal) By H. E. BOUDINOT, *Deputy.*

44 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(Appearance of Mr. W. P. McGinnis, U. S. Attorney, and Mr. Alvin F. Molony, Special Asst. to the U. S. Attorney, as Counsel for Appellants.)

United States Circuit Court of Appeals, Eighth Circuit.

GABE E. PARKER ET AL., APPELLANTS,
vs.
EASTMAN RICHARDS ET AL. } No. 5147.

... clerk will enter my appearance as counsel for the appellants.

W. P. MCGINNIS,
United States Attorney, Muskogee, Oklahoma.

ALVIN F. MOLONY,
Special Assistant to the United States, Attorney, Muskogee, Oklahoma.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 9, 1918.

(Appearance of Counsel for Appellees.)

The clerk will enter my appearance as counsel for the appellees.

J. B. LUCAS,
Checotah, Okla.

BRITTON H. TABOR,
Checotah, Okla.

45 (Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 29, 1918.

(Appearance of Mr. C. W. Miller, Special Asst. U. S. Attorney, as Counsel for the Appellants.)

The clerk will enter my appearance as counsel for the appellants.

C. W. MILLER,
Special Asst. U. S. Atty.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 27, 1918.

(Motion of Appellees to dismiss Appeal.)

Comes now Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased, the appellees in this cause No. 5147 styled as above, and moves this honorable court to dismiss

this appeal for the reason and upon the grounds that this is a second appeal brought in this court, and is one in which the same matters of facts and of law were involved in this same action, which have heretofore been determined by this court in a previous appeal in a decree rendered by this court on September 3, 1917, in cause No. 4799 hereof between the same parties litigant herein and involving the same subject matter.

Appellees respectfully state to this court that during the month of November, 1916, they filed in this court an appeal from a
46 decree made by the U. S. District Court for Eastern District of Oklahoma, between the same parties litigant herein and which involved the same subject matter involved herein and which was and is numbered as cause No. 4799 of this court; that in said cause which was heretofore presented to this court; this honorable court filed an opinion on August 21, 1917, and afterwards on September 3, 1917, entered its decree reversing the judgment in favor of the complainants, Eastman Richard et al., and against the said Gabe E. Parker et al., as more fully appears by the opinion and decree rendered by this court in said cause No. 4799 hereof, and which constitute a part of the permanent records of this court in cause No. 4799 and are hereby referred to.

Appellees further respectfully state to this court that thereafter and on November 5, 1917, a mandate was issued in cause No. 4799, directing the U. S. District Court for Eastern District of Oklahoma to enter a judgment and decree in favor of the complainants, Eastman Richard et al., and against the said Gabe E. Parker et al., as directed by the decree entered by this court in cause No. 4799 hereof, and as fully appears by the said mandate which is a part of the records of this court in cause No. 4799, and a copy of which said mandate is hereto attached for convenience of the court and marked Exhibit "A" hereof.

Appellees further state to this court that in compliance with said decree so rendered in cause No. 4799 between the same parties litigant herein (see Richard vs. Parker, 245 Fed. 330), that on February 28, 1918, the District Court for the Eastern District of Oklahoma entered a decree in favor of the appellees and against the appellants herein, as more fully is shown by a copy of said decree hereto attached marked Exhibit "B" and made a part hereof for convenience and is shown on pages 35–37 of transcript of record filed herein on April 5, 1918, in this cause No. 5147; that said decree was entered by said district court as directed in the decree and
47 mandate of this court in cause No. 4799, and that this appeal is now brought to this court by the appellants herein because of the rendition by the district court of its decree in favor of the appellees herein, which the said district court entered as directed by this court in cause No. 4799 as above stated.

Appellees further show to this honorable court that this second appeal now before this court in this cause, as shown by the records

of this court, involves the same matters of facts and questions of law as were determined by this court in the previous appeal in cause No. 4799 between the same parties litigant herein, and that by reason thereof this appeal should now be, by this court, immediately dismissed.

144 Fed. 342, Mutual Reserve Assn. v. Ferrenbach.

124 Fed. 170, Guarantee Co. v. Phenix Ins. Co.

104 Fed. 649, Haley v. Kilpatrick.

20 How. 467, 15 L. Ed. 969, Roberts v. Cooper.

The decree entered by the District Court on Feby. 28, 1918, from which this appeal is now brought to this court, was entered in accordance with the mandate issued by this court on Nov. 5, 1917, in cause No. 4799, and therefore this appeal should be dismissed.

78 Fed. 208, Merrill v. National Bank of Jacksonville.

97 Fed. 394, Tyler Min. Co. v. Last Chance Min. Co.

126 Fed. 746, Minn. Moline Plow Co. v. Dowagiac Plow Co.

77 Fed. 241, Gregory v. Pike.

76 Fed. 403 in de Pike.

Inasmuch as it is an universal rule of this court, and of all other courts, that a second appeal will not be entertained by this court, where the parties litigant are the same and the same ques-
48 tions of law are involved in this cause as were involved in the previous appeal, and inasmuch as it is a well-settled principle of law and practice that where a decree is entered in a cause as directed by the mandate of higher court in the same cause, that no apepal therefrom is permissable, as are the facts in this cause, we do not deem it necessary to file any extended brief or argument herein, but simply present to this court this motion to dismiss on the facts herein as shown by the records of this court in cause No. 4799 and this cause No. 5147.

Wherefore, appellees move this honorable court to dismiss this appeal, and also to make an order that the U. S. District Court for the Eastern District of Oklahoma to make an order directing the appellants to comply with the judgment entered by said District Court on Feby. 28, 1918 (35 Tr. Record), which said judgement was entered by that court in compliance with the directions contained in the mandate issued by this court on Nov. 5, 1917, in the previous appeal in No. 4799.

J. B. LUCAS and BRITTON H. TABOR,
Solicitors for Appellees.

(EXHIBIT "A.")

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America, to the honorable the judges of the District Court of the United States for the Eastern District of Oklahoma.

Greeting:

Whereas, lately in the District Court of the United States
49 for the Eastern District of Oklahoma, before you, or some of you, in a cause between Eastman Richard and R. D. Martin, co-administrators of the 'state of Samuel Richard, deceased, plaintiffs, and Gabe E. Parker, and Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, defendants, wherein the decree of the said District Court in said cause, entered on the 21st day of September, A. D. 1916, is in the following words, viz:

"It is ordered, adjudged and decreed by the court that the plaintiffs take nothing by this action, but that the defendants have and recover from the plaintiffs all costs herein laid out and expended.

"For all of which let proper execution issue.

"To all of which plaintiffs in open court except, and their exceptions are allowed, and thereupon the plaintiffs give notice of appeal in open court.

"RALPH E. CAMPBELL, *Judge*."

as by the inspection of the transcript of the record of the said district court, which was brought in to the United States Circuit Court of Appeals, Eighth Circuit, by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, at the September term, in the year of our Lord one thousand and nine hundred and seventeen, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the transcript of record from the district court, and was argued by counsel.

50 On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed without costs to either party in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said district court with directions to enter a decree for complainants in accordance with the opinion of this court.

SEPTEMBER, 3, 1917.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the fifth day of November, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals, Eighth District.

(Endorsed:) 2322. United States Circuit Court of Appeals, No. 4799, September Term, 1917. Eastman Richard, et al., Appellants,

v. Gabe E. Parker et al. Filed Nov. 7, 1917. R. P. Harrison, Clerk U. S. District Court. Mandate.

* 51 (EXHIBIT "B.")

In the United States District Court for the Eastern District of Oklahoma.

EASTMAN RICHARD AND R. D. MARTIN, co-administrators of the estate of Samuel Richard, deceased, plaintiffs, *vs.* GABE E. PARKER, AND GABE E. PARKER AS Superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, defendants.	No. 2322. Equity.

Decree.

On this 28th day of February, 1918, this cause came on for trial by agreement of the parties and on such date the court heard all the evidence in this cause and the argument of counsel, and thereupon, upon consideration of such evidence and argument, the court being well and sufficiently advised in the premises; and in compliance with directions contained in the mandate issued by the Circuit Court of Appeals on November 5, 1917, and filed in this court on November 7, 1917, directing this court to enter a decree for the plaintiffs in accordance therewith:

It is ordered, adjudged, and decreed by the court as follows: That the defendants Gabe E. Parker as superintendent for the Five Civilized Tribes, and W. M. Baker as cashier for the Five Civilized Tribes, account for and pay to the plaintiffs herein the sum of one hundred nineteen thousand six hundred twenty dollars and thirty-two cents ($119,621.32).

52 It is further ordered, adjudged, and decreed by the court that the said defendants as such aforesaid officials, and their successors in office, properly endorse, surrender, and deliver to plaintiffs United States Liberty bonds in the sum of one hundred and sixty-two thousand dollars ($162,000.00), as well as any and all notes and mortgages, certificates of deposit, drafts, and bonds or other evidence of indebtedness they have in their possession or control, representing royalty moneys received or collected from the Samuel Richard allotment of land hereinafter described.

It is further ordered, adjudged, and decreed by the court that the defendants as such aforesaid officials, and each of them, and their successors in office, be and they are hereby, perpetually enjoined, restrained, and forbidden from receiving, collecting, or interfering in

the collection of any and all moneys accruing as rentals and from the proceeds of said of royalty oil produced from the Samuel Richard allotment of land located in Creek County, State of Oklahoma, described as follows, to wit: Southwest quarter section four (4), township 17 north, range seven (7) east, of the Indian base and meridian according to the United States survey thereof, containing 160 acres of land, more or less, and the said defendants are further perpetually enjoined, restrained, and forbidden from hereafter interfering with the management, control, or supervision over said lands and of the rentals and royalties, if any, that have accrued therefrom or may hereafter accrue therefrom or any part thereof.

It is further by the court ordered, adjudged, and decreed that the defendants Gabe E. Parker and W. M. Baker personally neither have nor claim any right, title, or interest in the said funds, nor in the control or possession thereof, and that the said defend-
53 ants in their personal capacity go hence without day, with their costs herein laid out and expended.

To all and every portion of which the defendants Gabe E. Parker as superintendent for the Five Civilized Tribes and W. M. Baker as cashier for the Five Civilized Tribes, then and there excepted, and saved their exceptions; and thereupon, in open court, they, and each of them, gave notice of appeal to the Circuit Court of Appeals of the United States for the Eighth Judicial Circuit.

RALPH E. CAMPBELL, *Judge.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 20, 1918.

(Notice of Motion to dismiss Appeal.)

To: The appellants above named and to their solicitors of record, W. P. McGinnis, Paul Pinson, and A. F. Malony:

Notice.

You are hereby notified that appellees intend to file a motion to dismiss the appeal in the above numbered and style cause and that the same will be presented to the honorable judges of the above court on May 27th, 1918, as a soon thereafter as counsel will be heard by the court, at St. Paul, Minn.; and you are hereby now served with a copy of the motion to dismiss, including brief attached thereto, which will be filed. You will kindly govern yourselves accordingly.

54 Dated this 9th day of May, 1918.

J. B. LUCAS,
BRITTON H. TABOR,
Solicitors for Appellees.

Acceptance of Service of Notice and of Copy of Motion to Dismiss.

We accept service of the foregoing notice and of copy of motion to dismiss appeal, this 9th day of May, 1918.

W. P. McGINNIS,
United States Attorney.
ALVIN F. MOLONY,
Special Asst. United States Attorney.
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 20, 1918.

(Response to Motion to Dismiss.)

And now come the appellants in the above entitled and numbered cause by their undersigned solicitors, and for their response to the motion to dismiss heretofore filed herein by the appellees, respectfully show unto the court as follows:

That this suit originated in the District Court of Muskogee County, State of Oklahoma, and came into the United States District Court for the Eastern District of Oklahoma upon petition and bond for removal, the transcript having been filed in the office
55 of the clerk of the latter court on August 18, 1916, and having been docketed therein as Equity No. 2322. On the same day, the plaintiffs in the action filed their first amended petition, and on August 30, 1916, the defendants filed their answer thereto.

On September 12, 1916, the said United States District Court for the Eastern District of Oklahoma entered a decree in said cause dismissing plaintiffs' petition therein; and on September 21, 1916, the plaintiffs having filed a petition for appeal and assignment of errors, the court entered an order allowing the plaintiffs to appeal from the decree to the United States Circuit Court of Appeals for the Eighth Circuit. The original certified transcript of the record on appeal, together with the required number of copies, were filed in the office of the clerk of this court at St. Louis, Missouri, on the ——— day of November, 1916, and docketed therein as No. 4799. On August 21, 1917, this court filed an opinion in the cause, reversing the decree of the lower court and remanding the cause with directions that a decree be entered for the appellants in that appeal (plaintiffs below) in accordance with the opinion of this court. Afterwards, on September 3, 1917, this court entered its decree to the same effect; and on November 5, 1917, issued a mandate reversing the judgment below without costs to either party, and remanding the cause to the lower court with directions to enter a decree for plaintiffs below, in accordance with the opinion of the appellate court.

On November 30, 1917, the appellees in appeal No. 4799 (defendants below) having filed herein their petition for appeal from the decree of this court to the Supreme Court of the United States and

their assignment of errors, the Honorable Kimbrough Stone, one of the judges of this court, made an order allowing an appeal
56 from the decree of this court to the United States Supreme Court without bond, and signed and issued a citation for service on the adverse parties; and on December 1, 1917, the petition for appeal to the Supreme Court of the United States, assignment of errors, order allowing the appeal and citation were duly filed in the office of the clerk of this court at St. Louis, Missouri. The original citation and acceptance of service thereof was thereafter duly filed in the office of the clerk of this court on December 5, 1917.

On December 6, 1917, the clerk of this court forwarded the original certified transcript of the record on appeal in said cause, together with the required number of copies thereof, to the Solicitor General at Washington, D. C., and said record on appeal was thereafter duly filed in the office of the clerk of the United States Supreme Court at Washington, D. C., and docketed therein as No. 786 of the October Term.

Thereafter, on December 29, 1917, the said mandate of this court was spread of record in the office of the clerk of the United States District Court for the Eastern District of Oklahoma, pursuant to the order of the latter court of that date; and on February 28, 1918, the said United States District Court entered its decree in accordance with the opinion and mandate of this court.

The appellants herein gave notice of appeal from the decree entered below on February 28, 1918, in open court; and on March 1, 1918, filed their petition for appeal to this court and assignment of errors, which petition for appeal to this court was allowed by the said United States District Court without bond on the same day, namely, March 1, 1918. On April 5, 1918, the original certified transcript of the record in said cause, together with the required number of copies thereof, were duly filed in the office of the clerk of
57 this court at St. Louis, Missouri, and the same thereupon duly docketed therein as No. 5147. This is the appeal sought to be dismissed by appellees.

On November 3, 1917, the Department of Justice at Washington, D. C., wrote a letter to the United States attorney at Muskogee, Oklahoma, wherein the latter was directed to prosecute an appeal from the decree of this court rendered in appeal No. 4799 on September 3, 1917, to the Supreme Court of the United States, which letter, of course, was not received by the United States attorney until several days later. This was after the expiration of the sixty-day limitation within which to supersede the decree of this court under sec. 1007, Rev. Stat.

It thus appears that the appeal to the Supreme Court was prosecuted before the mandate of this court was spread of record, and before the decree appealed from herein was entered in the lower court.

It is frankly stated that the sole purpose of this, the second appeal of this case, is to obviate any difficulty the Supreme Court may experience in dealing with the case in the District Court because of

the failure of the Government to supersede the decree of this court within sixty days after the rendition thereof, and further to stay execution in the District Court until the matters in controversy have been fully and fairly considered and finally decided by the Supreme Court in appeal No. 786, now pending before it.

The case of Merrill vs. National Bank of Jacksonville, 173 U. S. 131, furnishes a precedent for the course followed by the Government in this case. There the Circuit Court entered its decree January 29, 1896, from which an appeal was prosecuted to the Circuit Court of Appeals for the Fifth Circuit. The latter court reversed and remanded the cause with directions to the Circuit Court.

58 From that decree, after the mandate of the Circuit Court of Appeals had been sent down to the Circuit Court and proceedings had thereunder, an appeal was taken and perfected to the Supreme Court and was numbered 54 therein. The Circuit Court entered a decree in pursuance of the mandate of the Circuit Court of Appeals on July 27, 1896, and a second appeal was prosecuted therefrom to the Circuit Court of Appeals, which was by that court dismissed on motion of the appellees. From the decree of dismissal entered in the Circuit Court of Appeals, an appeal was allowed and perfected to the Supreme Court and numbered 55 therein. In holding that the sending down of the mandate and the entry of the decree by the Circuit Court before the appeal in No. 54 was prosecuted to the Supreme Court did not operate to cut off that appeal, and that the second appeal enabled the Supreme Court to obviate any difficulty in dealing with the cause in the Circuit Court, the court said:

"The Circuit Court of Appeals reversed the decree of the Circuit Court with specific directions. Nothing remained for the Circuit Court to do except to enter a decree in accordance with the mandate, and, for the purposes of an appeal to this court, the decree of the Circuit Court of Appeals was final. The mandate went down and the Circuit Court entered its decree in strict conformity therewith before the appeal in No. 54 was prosecuted to this court. This promptness of action did not, however, cut off that appeal, and any difficulty in our dealing with the cause in the Circuit Court was obviated by the second appeal, which brings before us in No. 55 the record subsequent to the first decree of the Circuit Court of Appeals."

59 For the reasons stated, the motion to dismiss ought to be denied.

Respectfully submitted.

W. P. McGinnis,
United States Attorney.
C. W. Miller,
Alvin F. Molony,
Special Assistants to the United States Attorney,
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 23, 1918.

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

MAY TERM, 1918.
Monday, May 27, 1918.

GABE E. PARKER, AND GABE E. PARKER, AS SUPERINTENDENT for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as Cashier for the Five Civilized Tribes, appellants,
vs.
EASTMAN RICHARD AND R. D. MARTIN, CO-ADMINISTRATORS of the Estate of Samuel Richard, deceased. } No. 5147.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

60 This cause came on this day to be heard on the notice and motion of appellees to dismiss the appeal herein for the reason and upon the grounds that this is a second appeal to this court and one in which the same matters were involved in this same action which have heretofore been determined by this court in a previous appeal in a decree rendered by this court on September 3, 1917, in cause No. 4799 between the same parties litigant herein and involving the same subject matter; and also upon the response of appellants to said motion, Mr. Britton H. Tabor appearing for appellees in support of said motion and Mr. C. W. Miller appearing for appellants in opposition thereto.

On consideration whereof, it is now here ordered by this court, in pursuance of said motion, that the appeal in this cause be, and the same is hereby, dismissed without costs to either party in this court.

Counsel for appellants in open court excepts to the foregoing order and gives notice of appeal to the Supreme Court of the United States.

MAY 27, 1918.

(Petition for Appeal, Assignment of Errors, and Order allowing Appeal to Supreme Court, U. S.)

Petition for Appeal to the Supreme Court, U. S.

Gabe E. Parker, Gabe E. Parker as Superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellants, as above named, by their solicitors

of record, W. P. McGinnis, United States attorney for the Eastern District of Oklahoma, and Alvin F. Molony, special assistant to the United States attorney for the Eastern District of Oklahoma,
61 conceiving themselves aggrieved by the decision and decree of the United States Circuit Court of Appeals made in the above entitled cause on the 27th day of May, 1918, do hereby appeal from said decision and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, filed herewith, and pray that this appeal may be allowed and that a transcript of the record and proceedings in said cause, with all things concerning the same, duly authenticated, may be sent to the Supreme Court of the United States.

W. P. McGinnis,
United States Attorney,
Alvin F. Molony,
Special Assistant to the United States Attorney,
Solicitors for Appellants.

Assignment of Errors on Appeal to the Supreme Court, U. S.

Now come Gabe E. Parker, Gabe E. Parker as Superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellants, by their solicitors of record, W. P. McGinnis, United States attorney for the Eastern District of Oklahoma, and Alvin F. Molony, special assistant to the United States attorney for the Eastern District of Oklahoma, and say, that in the record and proceedings in this cause there is manifest error and that the United States Circuit Court of Appeals for the Eighth Circuit erred in this, to wit:

First. The court erred in sustaining the motion of the appellees to dismiss the appeal of the appellants from the decree of the United States District Court for the Eastern District of Oklahoma made and entered on the 28th day of February, 1918.

62 Second. The court erred in not overruling the said motion of the appellees to dismiss the appeal of the appellants from said decree.

Third. The court erred in dismissing said appeal.

Fourth. The court erred in failing and refusing to postpone its decision upon said motion to dismiss said appeal until the ultimate determination of the identical questions involved herein now pending upon appeal in the Supreme Court of the United States from the decision and decree of the United States Circuit Court of Appeals for the Eighth Circuit made and entered in said cause on the 3d day of September, 1917.

Fifth. The court erred in dismissing said appeal from the said decree of the United States District Court for the Eastern District of Oklahoma made and entered on the 28th day of February, 1918, at a

time when all matters and things in controversy herein were pending before the Supreme Court of the United States in the said appeal heretofore perfected and prosecuted from the said decision and decree of this court made and entered on the 3d day of September, 1917, to the Supreme Court of the United States.

Sixth. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby holding, deciding and decreeing that the appellees herein, Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, should recover from the appellants the moneys sued for or any portion thereof.

Seventh. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby holding, deciding and decreeing that after the title to the land and moneys in con-
63 troversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to retain, control, collect, and disburse the moneys which had accrued prior to the death of said Samuel Richard, under the terms of the oil and gas mining lease covering his restricted allotment.

Eighth. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby holding, deciding and decreeing that after the title to the land and moneys in controversy had become vested through inheritance in Eastmas Richard, a full-blood Creek Indian and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to retain, control, collect and disburse the moneys which had accrued since the death of said Samuel Richard, under the terms of the oil and gas mining lease covering his restricted allotment.

Ninth. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby holding, deciding and decreeing that after the title to the land in controversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to supervise the operations carried on under the terms of the oil and gas mining lease covering the restricted allotment of said Samuel Richard, deceased.

Tenth. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby sustaining and affirming the decree of the United States District Court for the
64 Eastern District of Oklahoma made and entered for the appellees herein on the 28th day of February, 1918.

Wherefore, the appellants pray that such judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit be reversed, and that the Supreme Court of the United States of

America render such proper decree as shall conform to the facts disclosed by the record and the law applicable thereto.

W. P. McGINNIS,
United States Attorney.
ALVIN F. MOLONY,
Special Assistant to the United States Attorney,
Solicitors for Appellants.

Order Allowing Appeal to Supreme Court, U. S.

It is hereby ordered that the appeal in the above entitled cause in the United States Circuit Court of Appeals for the Eighth Circuit be and is hereby allowed as prayed, and it further appearing that the appeal herein is being prosecuted by the United States of America for and on behalf of certain officials of the Department of the Interior, to wit, the Superintendent and Cashier, respectively, for the Five Civilized Tribes, and answerable herein only in their official capacity, it is further ordered that said appeal be without bond.

WALTER H. SANBORN,
United States Circuit Judge, Eighth Circuit.

JUNE 20, 1918.

65 (Endorsed:) Filed in U. S. Circuit Court of Appeals, Jun. 20, 1918.

66 Citation.

United States of America, ss.

To Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from and after the date hereof, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit from a judgment and order of dismissal rendered in a cause wherein Gabe E. Parker, Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, are appellants, and you are appellees, to show cause, if any there be, why the order, judgment and decree dismissing the appeal of the said appellants from the decree of the United States District Court for the Eastern District of Oklahoma made and entered for the appellees herein on the 28th day of February, 1918, and in effect thereby sustaining and affirming the said decree of the said United States District Court for the Eastern District of Oklahoma in the above entitled cause, as in said appeal mentioned, should not be

corrected and why speedy justice should not be done to the parties in that behalf.

67 Witness, the Honorable Walter H. Sanborn, United States Circuit Judge in and for the Eighth Circuit, at St. Paul, Minnesota, this 20th day of June, A. D. 1918.

WALTER H. SANBORN,
United States Circuit Judge,
Eighth Circuit.

68 We, the undersigned solicitors of record of Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased, appellees, do hereby accept and acknowledge service of the within citation this 24th day of June, A. D. 1918.

J. B. LUCAS,
BRITTON H. TABOR,
Solicitors for appellees, Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased.

69 (Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the act of Congress approved February 13, 1911, and full, true, and complete copies of all the pleadings, record entries, and proceedings, had and filed in the United States Circuit Court of Appeals except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Gabe E. Parker et al. were appellants, and Eastman Richard et al., were appellees, No. 5147, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acceptance and acknowledge of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this tenth day of July, A. D. 1918.

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) No. 5147. In the United States Circuit Court of Appeals for the Eighth Circuit. Gabe E. Parker et al., appellants, vs. Eastman Richard et al., appellees. Citation on appeal to Supreme Court, U. S. Filed June 26, 1918. E. E. Koch, clerk.

(Endorsed on cover:) File No. 26,649. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 563. Gabe E. Parker, Gabe E. Parker, as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker, as cashier for the Five Civilized Tribes, appellants, vs. Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased. Filed July 17th, 1918. File No. 26,649.

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In the Supreme Court of the United States.

OCTOBER TERM, 1918.

GABE E. PARKER, GABE E. PARKER AS Superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellants,

v.

EASTMAN RICHARD AND R. D. MARTIN, co-administrators of the estate of Samuel Richard, deceased.

No. 563.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and respectfully moves that the above entitled cause be advanced to be heard together with case No. 313 bearing the same title and between the identical parties.

In case No. 313, Richard, a full-blood Creek Indian, as administrator and heir of his son, sued Parker as Superintendent for the Five Civilized Tribes, to recover royalties in the sum of $216,145.16 accumulated during the lifetime of the son on an oil and

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gas lease made under section 2 of the Act of May 27, 1908, 35 Stat. 312. The District Court entered judgment in favor of Parker, the defendant. The Circuit Court of Appeals reversed the decision of the District Court and decreed that the money held by the Superintendent for the Five Civilized Tribes should be paid over to the administrator and heir of the Indian. An appeal was taken from the judgment of the Circuit Court of Appeals to this court too late to operate as a supersedeas under section 1007 of the Revised Statutes. *Title Guaranty Co.* v. *General Electric Co.*, 222 U. S. 401, and cases cited. The mandate having gone down from the Circuit Court of Appeals, the District Court entered its decree in conformity therewith while the appeal was pending in this court, and this case, No. 563, brings up for review the record subsequent to the first decree of the Circuit Court of Appeals and was brought to obviate any difficulty in dealing with the cause in the District Court if the decree of the Court of Appeals in No. 313 should be reversed. *Merrill* v. *National Bank*, 173 U. S. 131, 134, 147.

Notice of this motion has been served on opposing counsel.

ALEX. C. KING,
Solicitor General.

MARCH , 1919.

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